United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7187

United States Court of Appeals For the Second Circuit

B

DOCKET NOS. 77-7187; 77-7271; 77-7273

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, JR., individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced,

Plaintiffs,

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, MARTIN F. RANDOLPH, JR., GARY MICHAEL and MICHAEL FAGAN,

Plaintiffs-Appellants,

I. WALTON BADER,

Appellant,

-against-

TELEPROMPTER CORPORATION, TOUCHE ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE", being fictitious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts involved herein,

Defendants,

TOUCHE ROSS & CO.,

Defendant-Appellee,

HARRY LEWIS, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Consolidated Appeal

JOINT APPENDIX
(VOLUME I – Pages A-1–A-24e; A25-A42; 1-224)

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PAGINATION AS IN ORIGINAL COPY

ERRATA SHEET
Erroneous Page References
in Joint Appendix

Page	Error
ii	Exhibit G begins on page 317, not page 311
iv	The Affidavit in Support of Motion to Compel begins on page 404, not 402
vii	The Affidavit of Service begins on page 519, not 518
vii	The Supplemental Affidavit in Support of Motion by Defendant Touche Ross & Co. to Dismiss the Amended Complaint Pursuant to Rule 37 begins on page 521, not 519
ix	The Notice of Appeal Filed January 23, 1976 begins on page 655, not 656
xi	The Attachment - Envelope appears on page 762a, not 762
xii	Exhibit H to the Affidavit in Support of Motion to Vacate begins on page 871, not 870
489	Exhibit C should be cross-referenced to pages 422-429, not to pages 417-421
489	Exhibit D should be cross-referenced to portions of pages 408-413, not to pages 402-416
489	Exhibit E should be cross-referenced to page 415, not to pages 402-416
787	Exhibit D should be cross-referenced to pages 771-772, not to pages 901-903
787	Exhibit E should be cross-referenced to pages 768-769, not to pages 848-849
787	Exhibit G should be cross-referenced to pages 726-727, not to pages 727, 726
787	Exhibit H should be cross-referenced to pages 745-746, not to pages 740-741

ERRATA SHEET
Erroneous Page References
in Joint Appendix (Con't.)

Page	Error
788	Exhibit K should be cross-referenced to pages 695-696, not to pages 685-696

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Cross-reference sheet which should have appeared at p. 591 of the Joint Appendix 4

A1

CONSOLIDATED WITH 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, 74 Civ 3281 & 4341 — CIVIL DOCKET

Vol. Dis. 1-23-76

75 Civ 1815

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

73 CIV. 3929

TITLE OF CASE	ATTORNEYS
HARRY LEWIS vs. VALENTINE CORP.	For plaintiff: WOLF, POPPER, ROSS, WOLF & JONES 845 Third Avenue New York, N.Y. 10022 Plaza 9-4600 Bader & Bader Esq 65 Court St. Wh Plains NY 10001 532-6860 (For pltffs:IIFL, Randolph & Fagan. For defendant: Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 Mo 1-3200 Anderson & Goldman 295 Madison Ave. NYC 10017 679-2400 (John R. Barrington) Paul Weiss Rifkind Wharton & Garrison 345 Park Ave. NYC 10022 (Defts Cooke, Bresnan, Wrather, Schafe Lewis, Lowe, Livingston & Simon) Rosenman Colin Freund Lewis & Cohen 575 Madison Ave. NYC 10022 644-7000

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
S. 5 mailed X	Clerk			7/1/73	[illegible]	[illegible]		75	—
S. 6 mailed	Marshal								
asis of Action: S. E. C. ACT of 1934 Rule 23 Allegation	Docket fee								
	Witness fees								
ction arose at:	Depositions								

MAC MAHON, J. HARRY LEWIS -v- TELEPROMPTER CORP.

73 CIV. 392

A-2

DATE	PROCEEDINGS
Sep.13-73	Filed complaint. Issued summons.
Sep.13-73	Filed order appointing person to serve process. Albert D.Clark, Clerk.
Sep.20-73	Filed summons and affdvt of person service of Albert Clark
Oct.15-73	Filed ANSWER of deft. to complaint.
1-23-74	PRE-TRIAL CONFERENCE HELD BY SGCAK
11-8-74	Filed pltffs affdvt in opposition to counter proposed order of consolidati & in response to motion for reargument, etc.
Nov.13-74	Filed affdvt of Stanley L. Kaufman in support of proposed order consolidating actions submitted by lead counsel.
Nov.13-74	Filed pltffs in (73 Civ 4895) affdvt in support of consolidation order proposed by lead counsel.
Nov.19-74	Filed pltffs affdvt re previously submitted proposed order of consolidation.
Nov.19-74	Filed defts (Puckett & Richardson's) affdvt in opposition to proposed order for settlement by lead counsel for pltffs.
Nov.19-74	Filed Order of consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 (for pretrial purposes only) & 74 Civ 4341.) A consolidated complt shall prepared & served by lead counsel re claims for relief, with exception of pltff (Bush), & such consol. complt to be served within thirty (30) days as indicated. Lead counsel to be Wolf Popper & Ross Wolf & Jones, as indicated. All motions to determine class action status pending in constituant actions are hereby withdrawn without prejudice & subject to renewal as provided. A copy of this Order shall be filed in each of the constituent actions. Defts to serve & file answers or move within(20) twenty days of service, with lead counsel on behalf of pltffs shall serve & file a motion to determine whether consolidated action shall be maintained as a class action. Present & former stockholders of Teleprompter Corp. are stayed from commencing or continuing any derivative actions, etc. Each pltff shall bear a proportionate share of all costs, etc. incurred by lead counsel in the consol. action.....MAC MAHON, J. m/n
ov.27-74	Filed Notice of Entry of Order entered 11-19-74.
c.12-74	Filed Stip & Order extending to 1-3-75, time for deft (L.Tow) to move or answer Count two (2) of the Bush complt.....MAC MAHON, J.
ec.19-74	Filed notice that record on appeal in 74 Civ 3025 has been cerified & transmitted to the USCA.
ec.26-74	Filed Consolidated class action complt on behalf of all pltffs except pltffs in 73 Civ 4133, against defts named.
an.7-75	Filed affdvt of Martin F. Randolph, Jr. pltff in (73 Civ 4133).
an.7-75	Filed transcript of Nov. 13, 14, 1975.
an.10-75	Filed Stip & Order extendingnto 1-17-75 for deft Leonard Tow, to answer re count 2 of the Bush complt.....MAC MAHON, J.
an.16-75	Filed def't (Schlafly) notice of motionto dismiss the second count of the complt. Ret. 1-31-75.
an.16-75	Filed def't (Schlafly) memo in support of motion to dismiss the second count of the complt.
an.15-75	Filed Stip & Order extending to 2-15-75 deft (Touche Ross) to answer or make any motion re complt.....MAC MAHON, J.
an.21-75	Filed Stip & Order extending to 1-29-75 for pltffs to move for a class action determination.....MAC MAHON, J.
an.21-75	Filed Stip & Order extending to 2-15-75 for def't (Schlafly) to answer or move re complt.....MAC MAHON, J.

//////////Con't on Page #2

v 3929 HARRY LEWIS, et al -v- TELEPROMPTER CORP. 73 Civ 3929

CIVIL DOCKET Page #2 MAC MAHON

A-3

DATE	FILINGS—PROCEEDINGS	AMOUNTS REPORTED, ENCLOSURES RETURNED
Jan.21-75	Filed ANSWER of def't (L. Tow) to consolidated class action complt.	KLR&S
Jan.22-75	Filed Stip & Order extending to 2-15-75 for def't (Barrington) to move or plead re Consolidated Class Action Complt..... MAC MAHON,J.	
Jan.22-75	Filed Stip & Order extending to 2-15-75 for defts (A.E. Puckett & J.H. Richardson) to answer or move re consolidated class action complt. .....MAC MAHON,J.	
Jan.22-75	Filed Stip & Order extending to 2-15-75 for def't (Teleprompter) to move or answer re consolidated class action complt. ..... MAC MAHON,J.	
Jan.30-75	Filed pltffs affdvt in opposition to motions of defts (Puckett Richardson & Schlafly) to dismiss the second count of the (Bush) action, 74 Civ 3281.	
2-4-75	Filed ANSWERto complt by def't (Touche Ross). (amended complt)	RCKPF&E
2-3-75	Filed Stip & Order adj. to 2-18-75 for pltffs to move for a class action determination.....MAC MAHON,J.	
Feb.18-75	Filed ANSWER of defts Allen E. Puckett & John H. Richarson to consolidated class action complt.....	MTH&McC
Feb.18-75	Filed ANSWER of deft (Touche Ross) to consolidated class action complt.	RCKPF&E
Feb.19-75	Filed deft (Teleprompter) ANSWER to cosolidated class action complt.	SGC&K
Feb.19-75	Filed deft (Schlafly) ANSWER to consolidated class action complt.	HDL&H
Feb.21-75	Filed ANSWER of(John R. Barrington) to consolidated class action complt.	A&G
Feb.25-75	Filed Stip & Order extending to 3-4-75 for pltffs to move for class action determination.	
Mar.7-75	Filed Stip & Order extending to 3-7-75 for certain defts to answer or move re Consolidated Class Action Complt..... MAC MAHON, J	
Mar.10-75	Filed affdvt & Order to withdraw as attys for certain defts... MAC MAHON,J m/n (Paul, Weiss, Rifkind. Wharton & Garrison) as substitution.	

//////// Con't on Page #3

D.C. 110

DATE	FILINGS—PROCEEDINGS A-4	AMOUNT REPORTED TO ENDOWMENT RETURNED
Mar.12-75	Filed Memo-Endorsement on motion of 1-16-75. The within motion to dismiss the second count is granted with leave to serve & file an amended complt within fifteen (15) days. See memo-end. of this date with respect to the motion of defts Puckett & Richardson to dismiss the secound count.....MAC MAHON,J m/n	
Mar.12-75	Filed Memo-End. on motion of 12-30-74. The within motion to dismiss the second count is granted with leave to serve & file an amended complt within fifteen (15) days.....So Ordered, MAC MAHON,	
Mar.12-75	Filed Stip & Order adjourning to 3-31-75 for pltffs to move for a class action determination.	
Mar.20-75	Filed Stip & Order extending to 3-28-75 for certain defts to move or answer Consolidated Class Action Complt.....MAC MAHON,J	
Apr.2-75	Filed pltffs affdvt & notice of motion for class action determination. Ret. 4-11-75	
Apr.2-75	Filed pltffs memo of law in support of motion to maintain action as a class action.	
Apr.4-75	Filed Stip & Order extending to 4-11-75 for certain defts to move or answer re consolidated class action complt.....MAC MAHON,J	
4-14-75	Filed Stip. & Order that the motion of pltff for a class action determination is adj. to 5-2-75 at 2:15PM., and that defts. Puckett and Richardson will serve pltff. with any opposing papers by 4-25-75....MacMahon,J.	
pr.23-75	Filed Stip & Order as to certain defts extending to 4-15-75 to move or answer re Consolidated Class Action Complt.....MAC MAHON,J	
or.25-75	Filed defts (Puckett & Richardson) affdvt in opposition to class action motion.	
or.25-75	Filed defts (Puckett & Richardson) memo of law in opposition to class action certification.	
2-75	Filed deft (Tow) affdvt in opposition to motion re maintaining consolidated action as a class action.	
y 6-75	Filed Stip & Order adjourning pltffs class action determination motion to 5-16-75.....MAC MAHON,J	
12-75	Filed deft (Schlafly) affdvt in opposition to pltffs motion for Class Action Certification.	
y 13-75	Filed Stip & Order as to certain defts extending to 5-16-75 for them to answer or move re Consolidated Class Action Complt...MAC MAHON,J	
y 16-75	Filed deft (Touche Ross) affdvt re class action determination.	
y 16-75	Filed Stip & Order adjourning to 5-30-75 motion of pltff for a class action determination.....MAC MAHON,J	

DATE	PROCEEDINGS JUDGE BRODERICK
[illegible]	Filed Stip & Order as to certain defts that time for defts to [illegible] Consolidated Class Action Complt be extended to 20 days following entry of Court's order deciding pltffs motion for a class determination.....MAC MAHON,J
[illegible]	Filed pltffs reply affdvt in support of class action motion.
[illegible]	Filed pltff's reply memo of law in support of motion for class action determination.
Jun.3-75	Filed Stip & Order adjourning to 6-6-75 motion of pltff for a class action determination.....MAC MAHON,J
Jun.6-75	Filed def't (Barrington) affdvt re pltffs motion for class action determination.
Jun.6-75	Filed def't (Schlafly) affdvt re class action motion.
Jun.6-75	Filed def't (Teleprompter) affdvt tr pltffs motion for class action determination.
Jun.6-75	Filed def't (Tow) affdvt in suport of pltffs motion for class action determination.
Jun.9-75	Filed certain defts affdvt who do not opposes pltffs class action motion.
Jun.16-75	Filed defts (Puckett & Richarson) affdvt re pending class action motion.
9-25-75	Filed Endorsement & Order on motion of 4-2-75. Pltffs satisfy the requirements of Rule 23, therefore, the Court grants their motion for class action status, subject to any further order as the facts may justify, & further grants pltffs request that notice be delayed to the class members until discovery is completed.....MAC MAHON,J m/n
1-13-76	Filed Opinion & Order #43708. Def't (Touch Ross) has moved for the imposition of sanctions against pltffs (IIPL, Randolph, Michael & Fagan) & their counsel. Sanctions are sought by virtue of circumstances disclosed in hearings held re the service on 9-3-74 of copies of purported answers of pltffs to Touche Ross interrogs dtd 11-1-73. For reasons indicated, given the conduct of Messrs Bader & Sands, I determine that pltff (IIPL & atty Bader) shall pay to the deft (Touche Ross) the actual expenses, including atty's fees, incurred by (TR) commencing with 9-6-74. Atty's for (TR) are to submit within 30 days in affdvt form a statement of services rendered commencing from 9-6-74, to which pltff (IIPL & Bader) may respond, so that I may reach an appropriate conclusion on this issue.....So Ordered.....It is not inappropriate to observe that such conduct such as that engaged in by pltff's counsel herein cannot & will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of atty's.....OWEN,J (Filed in 73 Civ 4133).
1-26-76	Filed pltffs request for production & inspection of documents.
2-23-76	Filed Order of Amendment to consolidated order, that the common issues in the (Lewis) consolidated class action complt & the second count of the complt in the (Bush) action shall be tried together as permitted by Rule 42(a). This Order shall be without prejudice to the right of any party in the (Bush) action to make any motion pursuant to Rule 42(b) provided such motion shall be made before 10-14-76..... MAC MAHON,J m/n (Bush action is 74 Civ 3281)

Con't on Page #5

DATE	PROCEEDINGS
-23-76	Filed Order that in the interest of judicial economy action 75 Civ 18. which involves common questions of law & fact as action 73 Civ 3929, shall be consolidated for all purposes with the (Lewis) action, & any amendment thereto shall be made applicable to the (Oliff, 75 Civ 1815) action. The consolidated class action complt in the (Lewis) action & all pleadings in response shall be deemed to include & or refer to the claims stated on behalf of pltffs in the (Oliff) action.....MAC MAHON,J m/n
2-23-76	Filed Pre-Trial Order #1. Counsel are directed to meet & discuss settlement within one week from the date of this order & if action is settled or otherwise terminated, directed to file a stip of discontinuance or voluntary dismissal or other proof of termination prior to the date of the pre-trial conference. Otherwise counsel are directed to appear in Room 2704, 1-23-76 at 11 A.M. for a pre-trial conference, etc. as indicated..... MAC MAHON,J n/m
-27-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.
-26-76	Filed notice of change of firm name to Rosenman Colin Freund Lewis & Cohen.
-1-76	Filed response of defts (Puckett & Richardson) to notice for production of documents.
3-5-76	Filed notice that supplemental record on appeal has been Certified & transmitted to the USCA.
3-12-76	Filed notice that supplemental record on appeal has been Certified & transmitted to the USCA.
2-18-76	Filed Stip & Order that the right to make any motion for summary judgment on behalf of any of defts listed, shall not be waived provided such motion is made returnable not later than 9-10-76. MAC MAHON,J
-18-76	Filed,notice that supplemental record has been Certified & transmitted to the USCA.
-24-76	Filed deft (L. Tow's) response to notice for production of documents.
-22-76	Filed affirmation & affdvts & notice of motion granting relief to pltff Independent Investor Protective League & other certain parties, etc. Ret. 5-7-76.
5-4-76	Filed deft Touche Ross answering affdvt on motion of Bader & Bader, dtd 4-22-76, ret. 5-7-76.
5-4-76	Filed pltffs affdvt in opposition to pltffs motion in (73 Civ 4133) to modify & vacate.
-6-76	Filed defts affdvt (Teleprompter) in opposition to the instant applicationby pltffs in(73 Civ 4133) (the movants) for an order vacating the stay in the order of consolidation, etc.
5-10-76	Filed deft (Touche Ross) rebuttal affdvt on motion of Bader & Bader dtd 4-22-76, Ret. 5-7-76. (Duplicate Original with addt'l proof of service.
5-14-76	Filed pltff (Michael Fagin) further answers to first interrogs of deft (Touche, Ross & Co).
-20-76	Filed Sur-Rebuttal affdvt of I. Walter Bader.
-25-76	Filed by pltffs att'y (Bader) replying affdvt to affdvt of Lawrence R. Eno.
5-27-76	Filed response of deft (Touche Ross) to affdvt of 5-25-76 of Walt. Bader.
5-[illegible]-76	Filed Suppl affdvt of I.W. Bader in support of mot on to vacate inj. etc.

Con't on Page #6

PROCEEDINGS JUDGE BRODERICK

7-29-76 Filed Memorandum & Order, #44886. Pltffs (Independent Investor Pro. League, M. Fagan, M. Randolph, S. Mosner, R.L. Gross, G.D. Mahon R.W. Stoddard, & J.C. Bernius) move for a modification of the injunctive provisions in this court's order of consolidation, so as to permit them to institute class litigation against deft (Touche Ross & Co.) in the New York State Court, for a determination that Judge Owen was without jurisdiction to impose sanctions on (Independent Investor Pro. L. & its atty I. Walton Bader, etc. For the reasons indicated, pltffs motion for modification of our consolidated order, reconsideration of Judge Owen's order, or a determination that Judge Owen's order was entered without jurisdiction is denied.....So Ordered, MAC MAHON, n/m

9-3-76 Filed Stip & Order amending Stip & Order dtd 3-12-76, re defts rights to make any motion for summary judgment shall not be waived provided such motion is ret. before 11-10-76....MAC MAHON, J.

9-3-76 Filed Stip & Order that time for parties to complete all discovery & inspection re Pre-Trial Order #2 is ext. to 11-1-76, & to 12-1-76 for parties to submit trial briefs, etc. This action to be added to the reserve trial calendar on or after 12-1-76... MAC MAHON

9-30-76 Filed pltffs affdvt in support re interlocutory appeal.

10-18-76 Filed Memo with Power of Attorney re Walton Bader.

10-19-76 Filed notice of filing of power of atty By Walton Bader, for Independe Investor Protective League.

10-26-76 Filed pltffs affirmation & notice of motion to dismiss Rule 37 proceedings in action (73Civ 4133), etc. Ret. 11-12-76

10-26-76 Filed pltffs memo in support of motion to dismiss Rule 37 proceedings in constituent action (73 Civ 4133), etc.

11-4-76 Filed Stip & Order ext. to 1-1-77 for parties to complete all discovery & inspection as provided in pre-trial order #2. Trial briefs & other written statements as required are extended to 1-15-77, & added to the reserve trial calendar on or after 1-15-77.....MAC MAHON, J.

11-4-76 Filed Stip & Order amending Stip & Order of 3-12-76 in that defts rights to make any motion for summary judgment shall not be waived provided that such motion is ret. by 1-10-77..... MAC MAHON, J.

11-11-76 Filed deft (Touche Ross, answering affdvt in opposition to motions relating to the order dtd 1-9-76 of Judge Owen in (73 Civ 4133)

11-11-76 Filed deft (Touch Ross) memo in opposition to motions relating to Judge Owen's Order dtd 1-9-76.

11-12-76 Filed pltffs in (73 Civ 4133) replying affirmation in support of motion to dismiss Rule 37 proceedings & for further relief in constituent act (73 Civ 4133).

11-18-76 Filed deft (Touche Ross) rebuttal affdvt in opposition to motions relating to Judge Owen's Order dtd 1-9-76, in (73 Civ 4133)

11-23-76 Filed Touche Ross Responce to "Sur- Rebuttal Affirmation".

11-26-76 Filed pltffs in (73 Civ 4133) demand for admissions.

12-1-76 Filed Notice of Remittitur, to Judge Broderick. MAILED NOTICES

12-14- Of Bader & Bader atty's (for pltff) notice of filing of Power of Atty for pltff.

12-[illegible] Of Pltffs' Notice of Depositions of ptys named.

Continued on page # 1

D.C. 107 Criminal Continuation Sheet

BEST COPY AVAILABLE

DATE	PROCEEDINGS
9-76	Fl Memorandum...accordingly, I hereby vacate" (1) The Order & Notice of Vol Dism... as "Jeff N. . Randolph Jr. Only" signed on 10-15-76, etc (2) The Order & Notice of Vol Dism signed & docketed on 1-23-76...Since the order of consolidation specifically excepted the proceedings pending before Judge Owen in 73 Civ 4133, he is the appropriate judge to hear and determine any matters relating to or arising out those proceedings or that action. etc....So Ordered.....MacMahon,J.
-14-76	Fl Pltffs TIPL's Notice of taking testimony of Touche Ross and Co. [illegible]
12-76	Fl [illegible]
-22-76	Fld Memorandum Unsigned OSC by deft T. Ross & Co and L. [illegible] Compliance with subpoena duces tecum and taking of deposition provided for in [illegible] deposition [illegible] on consent until the determination of this motion matter, together with covering papers, referred to Judge Owen. atty for pltff have agreed to serve Answering Papers by 12-30-76....Broderick,J. [illegible]
-76	Fld Stip & Order that certain depositions are adjourned as indicated....Brod rick,J.
76	Fld Deft Touche Ross's objections to req for admissions.
2-76	Fld " " " " " Subp Duces Tecum
1-76	Fld [illegible] of [illegible] of power of attorney [illegible] Inc.
29-76	Fld Pltffs TIPL etc's affdvit in opposition to OSC seeking to vacate Notice of taking testimony etc.
-29-76	Fld Pltffs' TIPL etc memo in opposition to OSC to ~~take~~ vacate taking testimony etc.
30-76	Fld " " [illegible]
0-76	Filed Memo Endorsed on back of Motion dated 10-20-76: The motion to seal the record of these proceedings is denied. Attorney for movants, having taken appelate review essentially disclosing the contents of this record, has waived any justification for this relief. In sum the motion for various items of relief is denied in its entirety...Owen,J.
3-77	Fld Stip & Order defts rights to make any motion for summ judg is to be ret befor or on 4-11-77.....Broderick,J.
-77	Fld Stip & ORder that the time of ptys to complete all discovery etc is ext to 4-1-77...e Broderick,J.
2-77	Filed Deft's (Touche Ross & Co. & Lawrence [illegible] Inc) reply affdvit to the opposing affirmation of I. Walton Bader, dated 12-29-76.
12-77	Filed memorandum of deft's Touche Ross & Co. and Lawrence [illegible] Inc on motion under Fed. R. Civ. P. 26 (c) and 45 In RESPONSE to memorandum in opposition.
-14-77	Filed Stip & Order that the depositions enumerated in pltff's notice of depositions are adjourned as indicated . etc...Broderick, J.
7-77	Fld Affdvt of H. F. Randolph Jr. Re: L. R. and acquaintance with Judge Owens.
7-77	Fld " " C. D. Mahon Re: " " " " " "
16-77	Fld Notice of Appeal by Pltff's (Independent Investor Protective League, Kathi F. Randolph, Jr., Gary Michael Fagan and I. Walton Bader) to the USCA from each and every part of an order made by Judge Owen USDC dated 12-29-76, for an order refusing to vacate an injunction or, in any event, relating to an injunction. Mailed Copies.
-7-77	Fld Sur-Rebuttal Affirmation of I. W. Bader with Ref to certain matters traspiring on argument of application before MacMahon, J. on 11-19-76.
4-25-77	Fld Stip & ORder that that defts' rights to make any motion for summ judg shall be waived provided that such motion is ret on or before 5-16-77...Broderick,J.
-25-77	Fld Stip & Order that time of ptys tocomplete all discovery is ext to 6-6-77 etc.. .....Broderick,J.
4-29-77	Fld Pltffs Randolph & Fagan's Motion ~~by~~ for an order directing defts to serve papers(by their attys) upon Bader & Bader who represnet pltffs, IIPL, Randolph & Fagan.....ret 5-13-77-Rm 654.....2:30PM.
5-5-77	Fld Pltffs IIPL, Randolph, and Fagan's Motion for anorder directing all entries of further proceedings in constituent action 73-4133 be entered in the docket of this consolidated action(73-3929) etc...ret 5-20-77-2:30PM.

CIVIL DOCKET

PLAINTIFF	DEFENDANT	DOCKET NO.
kwkw Lewis	Teleprompter	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
-10-77		Fld Answering affdvt on behalf of Touuhe Ross & Co in oppositiom to certain pltffs to be served with papers in the consolidated action.
5-11-77		Fld Pltffs' affdvt in oppostion to Bader & Bader's motion for an order directing service of papers & Orders upon them..etc...
5-18-77		Fld Touche Ross' aswering affdvt in opposition to pltffs motion of 73Civ 4133 for orders that no furhter entries be made in the docket sheets of 73-4133 etc. ...
5-27-77		Fld Independent Investorr Protective League and I. W. Bader's Notice of appeala to USCA from ORder by Judge Owen ent as a judgment in 73 Civ 4133. copies mailed on 5-31-77 to:Rosenman, Colin, Etc.....Anderson & Goldman..... ....Shea, Gould, Climenko & Casey.....Milbank, Tweed, Hadley & McCloy..... ....Hall, Dickler, Lawlerk, Kent, Howley....Holtzmann, Wise & Shepard..... ....Wolf, Popper, Ross, Wolf & Jones....Katz, Leavy, Rosenzweig & Sindle.... ....Paul, Weiss, Rifkind, Wharton & Garrison. mailed 5-31-77.
-1-77		Filed [illegible] of I. Walton Bader [illegible] Judge MacMahon.
-1-77		Filed [illegible] motion of I. Walton Bader on motion to vacate.
-1-77		Filed [illegible] affidavit of deft. Touche Ross on motion [illegible] 5-7-76.
-1-77		Filed [illegible] journal [illegible] claiming in re Independent Investor [illegible] with notice of Judge MacMahon.
-2-77		Filed Original records transmitted to the USCA on 6-2-77.
-1-77		Filed letter from I Walton Bader to Judge Griesa dtd: 1/15/74
-1-77		Filed letter of Lawrence Eno to Judge Griesa dtd: 11/19/73
-1-77		Filed letter of Lawrence Eno to Judge MacMahon dtd:1/30/75
-1-77		Filed letter of I Walton Bader to Judge MacMahon dtd:10/13/76
-1-77		Filed letter of I Walton Bader to Judge MacMahon dtd. 12/7/76
-1-77		Filed letter of I Walton Bader to Judge MacMahon dtd: 1/1/75
-1-77		Filed letter of I Walton Bader to Judge Owen dtd:10/16/76
-1-77		Filed letter of I Walton Bader to Judge Owen dtd: 2/10/76
-1-77		Filed affirmation of I Walton Bader in opposition to affidavit in support of fee application
-1-77		Filed rebuttal affidavit on behalf of Touche Ross and Co.
-1-77		Filed replying affirmation to affidavit of Lawrence Eno with respect to hearing in connection with attorney's fees.
-8-77		Fld Notice of Filing of Cash Deposition in Lieu of Bond on appeal by defts llBL. Randoplph, Fagan Michael & Bader.
7-28-77		Fld memo End on bk of motion fld 5-5-77=Motion w/d at conference on 7-27-77 So Ordered.....BroderickJ.

IDATED WITH 73 Civ 3929, 4133, 4895, 74 Civ 3025, (74 Civ 3281, pre trial only),

CIVIL DOCKET

UNITED STATES DISTRICT COURT

73 CIV. 4109

Jury demand date:

8-6-74- Pltf Jury Demand

D. C. Form No. 106 Rev.

JUDGE MAC MAHON

TITLE OF CASE	ATTORNEYS
REUBEN TUREK & HARRY SIGAFOOS 7-18-74 vs TELEPROMPTER CORP.	For plaintiff: Wolf Popper Ross Wolf & Jones 845 Third Ave. NY 10022 PL 9-4600 For defendant: Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 MU 1-3200

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
Mailed X	Clerk		8/5/74	Wolf &	15 —	
			8/5/74	Clerk		15 —
	Marshal					
	Docket fee					

Rev. Act of 1931

DATE	PROCEEDINGS	Date Ord Judgment
9-26-73	Filed complaint and issued summons.	
9-26-73	Filed order of Clark appointing Albert D. Clark to serve process.	
ct. 1-73	Filed affdvt. & service by an individual-served deft. by Peter Gross,Esq. 9-26-73-	
Oct.15-73	Filed ANSWER of deft. to complaint.	SGC&K
Nov.21-73	Filed pltffs Lewis & Turek's affdvt & notice of motion for class action determination. Ret. 11-23-73.	
Nov.21-73	Filed pltffs memo of law in support of motion.	
ov. 21-73	Filed pltff's request for production of documents.	
ov. 21-73	Filed pltff's notice to take deposition	
ec. -73	Filed stip. & order adjourning pltff's motion to 12-14-73--MacMahon,J.	
ec. 4-73	Filed stip. & order adjourning deft's deposition to 12-11-73-MacMahon,J.	
ec.14-73	Filed Stip and order extending time for deposition of Teleprompter until Dec.18-73. MacMAHON,J.	
Dec.14-73	Filed Stip and Order adjourning pltfs. motion for class action until Jan. 4-73. MacMAHON,J.	
ec. 28-73	Filed stip. & order adjourning pltff's motion to 1-18-74--MacMahon,J.	
ec. 28-73	Filed stip. & order extending deft's time to respond to pltff's request for production to 1-4-74--MacMahon,J.	
Jan.4-74	Filed stip and order adjourning deposition of deft. until Jan.9-74.MacMAHON,J.	
n. 15-74	Filed stip. & order adjourning deposition of deft. to 1-15-74--MacMahon,J.	
n. 15-74	Filed stip. & order extending deft's time to answer request for documents to 1-18-74--MacMahon,J.	
n. 15-74	Filed stip. & order adjourning pltff's motion to 1-25-74--MacMahon,J.	
an.23-74	Filed deft's affdvt in opposition to motion.	
an.23-74	Filed deft's memo in opposition to motion for class action determination.	
an.24-74	Filed pltfs. affdvt. in reply for class action.	
Jan.24-74	Filed pltfs. memo of law in support of motion for class action.	
n. 24-74	Filed stip. & order adjourning deposition of deft. to 2-1-74--MacMahon,J.	
an.24-74	Filed stip. & order extending deft's time to answer pltff's request for documents to 1-25-74--MacMahon,J.	
n. 28-74	Filed memo endorsed on pltffs' motion for class determination filed 11-21-73-- Motion denied following argument without prejudice to renewal, on or before 4-26-74- and upon completion of discovery- so ordered--MacMahon,J.-mailed notice.	
an. 29-74	Filed deft's answer to request to produce	
eb. 14-74	Filed stip. & order adjourning pltff's deposition to 2-25-74--MacMahon,J.	
pr. 11-74	Filed stip. & order adjourning deft's deposition to 4-8-74-MacMahon,J.	
pr.23-74	Filed stip and order extending time for pltf. to make motion for class action until 4-26-74. MacMAHON,J.	
ay 14-74	Filed pltfs notice of deposition of deft.	
ay 20-74	Filed stip and order extending time for pltf. to move for class action until 6-14-74. MacMAHON,J.	
n.19-74	Filed Stip & Order extending time for defts to produce documents until 7-26-74, & time for pltff to make motion for class action determination is extended to 8--9-74.	
ul.16-74	Filed pltffs affdvt & notice of motion to amend the complaint. Ret.7-26-74.	
ul.16-74	Filed pltffs memo of law in support of motion.	
l.18-74	Filed Stip & Order that Harry Sigafoos shall be added as a party pltff in this action.....MAC MAHON,J.	
.29-74	Filed pltffs affdvt & notice of motion for class action determination. Ret. 8-6-74.	
29-74	Filed pltffs memo of law in support of motion.	
-74	Filed Memo-End. on back of motion filed 7-16-74..Motion granted.So Ordered.MacMahon, J. m/n	

.v. 4109 REUBEN TUREK, et ano -v- TELEPROMPTER 73 Civ 410

Page #2 MAC MAHON, J

110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment
3-6-74	Filed pltffs amended complt., & demand for jury trial.	
3-9-74	Filed Stip & Order adjourning to 9-6-74 pltffs motion for class action determination.....MAC MAHON,J.	
3-12-74	Filed Stip & Order extending to 9-4-74 time for deft to answer or move re complr.....MAC MAHON,J.	
6-74	Filed defts affdvt in opposition to motion for class action determination.	
6-74	Filed defts memo in opposition to motion for class action determination.	
6-74	Filed defts answer to amended complaint.	
7-71	Filed Memo Endorsed on Pltff's motion filed 7-29-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. - MacMAHON,J.	
v.19-7	Filed Order of consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of order. m/n	
	No Further Entries	

H

A TRUE COPY
RAYMOND F. BURGHARDT

DISM. 1-23-76 / 73 Civ. 4109 / 73 Civ. 4133 / 73 Civ. 4895, 74 Civ. 3025, 74 Civ. 4341

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev.

Jury Trial Demand

73 CIV. 4133

TITLE OF CASE	ATTORNEYS
INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected & in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN, & MARTIN F. RANDOLF, JR. 10-17-74 individually and as Class Representatives, and in behalf of all other parties similarly situated & circumstanced	For plaintiff: Bader & Bader 274 Madison Ave. NY 10016 LE 2-6860 Arthur Kass Croton Falls, N.Y. Sub. 1-26-76
vs	
TELEPROMPTER CORP. TOUCHE, ROSS & COMPANY HERBERT SCHLAFLY, WILLIAM BRESLAN, MARVYN CARTON, "JOHN DOE" & "RICHARD ROW" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, & 1-13-75 - SECURITIES & EXCHANGE COMMISSION	For defendant: Lawler Sterling & Kent (Deft. Schlafly) 500 Fifthe Ave. NYC 10036 736-7050

1/23/76

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		1/23/76	Feb. 11	11 —	
			12/12	[illegible]		15 —
J.S. 6 mailed ✓	Marshal					
Basis of Action: Violation S.E.C. ACTS	Docket fee					
	Witness fees					
Action arose at:	Depositions					

JUDGE MAC MAHO

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
Sep 13.74	Filed Pltff's. First intercogs. to Deft. Touche Ross & Company.
Sep. 16-74	Filed deft's (Touche) affdvt & Order to Show Cause for an order pursuant to Rule 37 to dismiss. Ret. 9-20-74. Defts. time to answer amended complaint is extended to 10 days after the determination of this motion--Owen, J.
Sep. 16-74	Filed deft's (Touche) memorandum in support of motion to dismiss.
Sep. 16-74	Filed deft's (Touche) supplemental affdvt in support of motion to dismiss.
Sep. 16-74	Filed affdvt of service of order to show cause & the papers on which it is based.
Sep. 17-74	Filed deft's affdvt in opposition to motion for an extension of time to answer interrogs.(by deft. Touche)
Sep. 17-74	Filed deft's(Touche) memorandum in opposition to motion for enlargement of time.
Sep. 18-74	Filed pltff's supplemental affdvt in opposition to defts. motion & in support of pltff's motion.
Sep.18-74	Filed stip & order extending deft's (Schlafly) time to answer to 10-30-74-Owen,J.
Sep. 19-74	Filed pltffs' supplemental answers to 1st set interrogs.
Sep 23.74	Filed affidavit of Service by Steven E. Miller on 9/23/74 Order to Show Cause.
Sep 24.74	Filed Order to Show Cause. Orders that all discovery ~~of~~ by pltffs. be & the same hereby is stayed, & the time for deft. Touche Ross & Co. to object is extended until determination of this motion. Owen, J. Ret. ~~9/25/74~~. 10/4/74.
Sep 26.74	Filed Deft. Touche Ross & Co. Notice of hearing to take place on 1/11/74 in US Courthouse, Foley Square in room 2804.Etc.
Oct. 17-74	Filed notice of voluntary dismissal pursuant to Rule 41(a)(1)(i)FRCP of pltff. Martin F. Randolph, Jr. only--So Ordered--MacMahon, J.
Oct 22.74	Filed Deft. Touche Ross & Co. Notice of Vol. of pltffs. Gary Michael & Michael Fagan dtd. 10/17/74 deems the purported vol. dismissal.
Nov.19-74	Filed Order of Consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of Order. m/n
[illegible]	Filed transcript of record of proceedings, dated Nov 9, 1974
1-13-76	Filed Opinion & Order #43708. Deft Touch Ross has moved for the imposition of sanctions against pltffs (IIPL, Randolph, Michael Fagan) & their counsel. Sanctions are sought by virtue of circumstances disclosed in hearings held re the ~~to the~~ service on 9-3-74 of copies of purported answers of pltffs to Touch Ross interrogs dtd 11-1-73. For reasons indicated, given the conduct of Messrs Bader & Sands, I determine that pltff (IILP & atty Bader shall pay to the deft (Touche Ross) the actual expenses, including atty's fees, incurred by (TR) commencing with 9-6-74. Atty's for (TR) are to submit within 30 days in affdvt form a statement of services rendered commencing from 9-6-74, to which pltff (IIPL & Bader) may respond, so that I may reach an appropriate conclusion on this issue. So Ordered.....It is not inappropriate to observe that conduct such as that engaged in by pltff's counsel herein cannot & will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(1) of the General Rules of this Court providing for the disciplining of atty's.....OWEN,J m/n
1-23-76	Filed Order & Notice of Voluntary Dismissal pursuant to Rule 41(a) as against all defts since there has not been any Answer filed by any deft & no motion for summary judgment...So Ordered, MAC MAHON,J

Con't on Page #4

-K-

73 CIV. 4133

A-10

DATE	PROCEEDINGS	Dist Ct Interrog
9-25-73	Filed complaint and issued 20 & 60 day Summons.	✓
ct. 1-73	Filed stip. & order extending time of deft. Schlafly to answer to 12-18-73-Griesa,J.	✓
ct. 1-73	Filed pltffs' 1st set of interrogs.	✓
ov. 2-73	Filed stip. & order extending time of deft. Touche,Ross & Co. to answer to 12-18-73--Griesa,J.	✓
ov. 1-73	Filed pltffs' interrogs. to deft. Touche,Ross & Co. (first set.)	✓
ov. 1-73	Filed pltffs' interrogs. to deft. Teleprompter (first set.)	✓
ov. 7-73	Filed stip. & order extending time of deft. TelePrompTer Corp. to answer to 12-18-73--Griesa,J.	✓
ov. 7-73	Filed summons & return, served Teleprompter Corp. by Peter A. Gross-10-9-73--served Touche Ross & Co. by Miss M. Ryan-10-12-73.	✓
ov. 7-73	Filed summons & return, served SEC by Wm.D. Moran & by reg. mail to Atty. Gen'l 9-28-73--	✓
ov. 8-73	Filed additional summons & return, served William Bresnan-11-1-73--served Marvyn Carton-11-1-73	✓
ov 8-73	Filed deft's(Touche) notice to take depositions of pltff. by an officer,etc.	✓
ov. 8-73	Filed deft's(Touche) interrogatories (1st set)	
Nov.13-73	Filed deft's (Schlafly) answers to interrogs. (1st set)	✓
. 14-73	Filed pltff's notice to take deposition of Teleprompter Corp. by Merle Adams,	✓
. 4-74	Filed stip. & order extending time of deft. SEC to answer to 2-25-74--Griesa,J.	✓
. 4-74	Filed stip. & order extending time of deft. William Bresnan to answer to 1-10-74--Griesa,J.	✓
. 13-73	Filed memo endorsed on complaint--Defts. having moved orally at a PRE-TRIAL HEARING on Dec. 12-73--to dismiss the complaint for legal insufficiency, the motion is granted, subject to the conditions. Pltffs are given until 12-27-73 to serve an amended complaint complying with the rules of pleading (Rule 9(b) of the FRCP) in providing a sufficient statement of the wrongs alleged. On consent, the action is dismissed as to the S.E.C. without leave to replead. So ordered--Griesa,J. mailed notice	✓
. 1-74	Filed AMENDED COMPLAINT	✓
. 22-74	Mailed notice of reassignment.	✓
. 22-74	Filed stip. & order extending defts' time to answer to 2-15-74--Griesa,J.	✓
1/22/74	Pre-trial before (illegible)	
2-14	Filed letter from Rosenman, Colin Kaye Petschek Freund & Emil dated 2/13/74 to Judge Owen (memo. end.) Time to move or dismiss be extended for 30 days after ans are served. Owen J. (mailed notice)	✓
ul 10-74	Filed pltffs' answers to interrogs. of the deft. Touche Ross & Co. (First Set)	✓
ug 6.74	Filed (Touche Ross & Co.) Memorandum of Law.	✓
ug 6.74	Filed deft. Touche Ross & Co., Notice of Motion & Supporting affidavit, re: Answers to Interrogs. ret.8/16/74.	✓
ug 13.74	Filed Stip & Order that the time for all defts. to answer to amended complaint is extended to 9/16/74. Owen J.	
ug 16.74	Filed Mem. End. on motion dtd. 8/6/74. Motion granted in its entirety & is hereby applied certain 30 days time. Owen J. (mailed notice)	
ug 23.74	Filed pltff's. affirmation in opposition to motion to compel further answers to interrogs.	✓
ug 23.74	Filed Deft. Touche Ross & Co. reply affidavit.	✓
ep 10.74	Filed pltffs. Notice of Motion & supporting affidavit. Re: Further answers to Interrogs. ret. 9/20/74.	✓
ec 11.74	Filed pltffs. Further Answers to 1st Set of Interrogs. of the deft. Touche Ross & Co.	✓
ec 11.74	Filed pltffs. Notice of deposition of deft. Touche Ross & Co. on indicated.	
ep 11.74	Filed Pltffs. Further Answers to the First Interrogs of deft. Touche Ross & Co., by Pltff. Martin F. Randolph Jr.	MF

Cont'd. on page #3

73 Civ. 4133 INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al. -v- TELEPROMPTER CORPORATION, et al.

JUDGE MAC MAHON

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
Sep 13.74	Filed Pltff's. First interrogs. to Deft. Touche Ross & Company.
Sep. 16-74	Filed deft's (Touche) affdvt & Order to Show Cause for an order pursuant to Rule 37 to dismiss. Ret. 9-20-74. Defts. time to answer amended complaint is extended to 10 days after the determination of this motion--Owen, J.
Sep. 16-74	Filed deft's (Touche) memorandum in support of motion to dismiss.
Sep. 16-74	Filed deft's (Touche) supplemental affdvt in support of motion to dismiss.
Sep. 16-74	Filed affdvt of service of order to show cause & the papers on which it is based.
Sep. 17-74	Filed deft's affdvt in opposition to motion for an extension of time to answer interrogs.(by deft. Touche)
Sep. 17-74	Filed deft's(Touche) memorandum in opposition to motion for enlargement of time.
Sep. 18-74	Filed pltff's supplemental affdvt in opposition to defts. motion & in support of pltff's motion.
Sep.18-74	Filed stip & order extending deft's (Schlafly) time to answer to 10-30-74-Owen,J.
Sep. 19-74	Filed pltffs' supplemental answers to 1st set interrogs.
Sep 24.74	Filed affidavit of Service by Steven [illegible] Miller on 9/23/74 Order to Show Cause.
Sep 24.74	Filed Order to Show Cause, Ordered that all discovery ref by pltffs. be & the same hereby is stayed, & the time for deft. Touche Ross & Co. to object is extended until determination of this motion. Owen, J. Ret. 9/23/74. 10/4/74.
Sep 26.74	Filed Deft. Touche Ross & Co. Notice of hearing to take place on 1/11/74 in US Courthouse, Foley Square in room 2304.Etc.
Oct. 17-74	Filed notice of voluntary dismissal pursuant to Rule 41(a)(1)(i)FRCP of pltff. Martin F. Randolph, Jr. only--So Ordered--MacMahon, J.
Oct 22.74	Filed Deft. Touche Ross & Co. Notice of Vol. of pltffs. Gary Michael & Michael Fagan dtd. 10/17/74 deems the purported vol. dismissal.
Nov.19-74	Filed Order of Consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of Order. m/n
[illegible]	Filed transcript of record of proceedings, dated Nov 9,1974
1-13-76	Filed Opinion & Order 743708. Deft Touch Ross has moved for the imposition of sanctions against pltffs (IIPL, Randolph, Michael Fagan) & their counsel. Sanctions are sought by virtue of circumstances disclosed in hearings held re the ~~to the~~ service on 9-3-74 of copies of purported answers of pltffs to Touch Ross interrogs dtd 11-1-73. For reasons indicated, given the conduct of Messrs Bader & Sands, I determine that pltff (IILP & atty Bader shall pay to the deft (Touche Ross) the actual expenses, including atty's fees, incurred by (TR) commencing with 9-6-74. Atty's for (TR) are to submit within 30 days in affdvt form a statement of services rendered commencing from 9-6-74, to which pltff (IIPL & Bader) may respond, so that I may reach an appropriate conclusion on this issue. So Ordered.....It is not inappropriate to observe that conduct such as that engaged in by pltff's counsel herein cannot & will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of atty's.....OWEN,J m/n
[illegible]	Filed Order & Notice of Voluntary Dismissal pursuant to Rule 41(a) as against all defts since there has not been any Answer filed by any deft & no motion for summary judgment...So Ordered, MAC MAHON,J

Con't on Page #4

73 Civ 4133 INDEPENDENT INVESTOR , et al -v- TELEPROMTER CORP., et al

DATE	PROCEEDINGS	Date Judgm
-23-76	Filed Notice of Appeal to the USCA by pltffs Independent Investor Protective League & Martin R. Randolph, Jr., & Walton Bader, individually, from each & every part of a certain final Opinion & Order by Judge Owen, entered 1-13-76, dismissing the action as to def Touche Ross & Co., & awarding expenses & atty's fees against the pltff Independent Investor Protective League & I. Walton Bader, Indiv. Copies mailed to: Rosenman, Colin, Kaye, Petschek, Frend & Emil 575 Madison Ave., New York, N.Y.....Shea, Gould, Climenko, & Kramer, 330 Madison Ave., New York, N.Y.....Lawler, Sterling & Kent, 460 Park Ave., New York, N.Y.	
-26-76	Filed Stip & Order of substitution of atty's. Arthur Kass for I. Walton Bader.	
6-76	Fld Touche Ross's Affdvt by L. R. Eno, pur to Order of Owen, J. (70	
0-76	Fld " " Reply Affdvt by L.R. Eno to the affirmation of . I. W. Bader Esq.	
-1-76	Filed notice of change of firm name to Rosenman Colin Freund Lewis & Cohen.	
-25-76	Filed supplemental answers to interrogs of deft (Touche Ross),	
-12-76	Filed pltff (Saul Cohen) further answers to interrogs of deft (Touche Ross & Co).	
-26-76	Filed True Copy of Mandate & Opinion that the appeal from the order of the District Court is dismissed in accordance with the opinion of this court, with costs to be taxed against the appellants.....Clerk. Docketed as a Judgment #76,960, on 10-27-76, Clerk. n/m Bill of costs attached.	
9-76	Filed memorandum .... Counsel for plaintiffs submitted tothe Clerk's office two separa notice of voluntary dismissal.... Clerk's office understandably but erroneously sent t notices to me for signature. Those notices were " So ordered" inadvertently signed by Accordingly I hereby vacate: (1) Order and Notice of Voluntary Dismissal pursuant to R 41(a) (1) (i) FRCP of Pltff M. Randolph only signed on 10-15-74 and docketed 10-17-74 and (2) the"Order and Notice of Voluntary Dismissal prus. to FRCP 41" signed and dock on Jan. 23, 1976.....Since the order of consolidation specifically excepted the proc pending before J. Owen in 73 civ 4133, he is the appropriate judge to hear and dteermi any matters relating to or arising out of those proceedings or that action. The remaini matters of this motion, including the letter application to disqualify J. Owen are there respectfully referred to J. Owen So Ordered MacMahon J. m/n	
2-30-76	Filed satisfacion of Judgment # 76,960 .... in favor of deft. Touche in amt of $1,120.5 from pltffs I .Walton Bader and M. F. Randolph Jr.	
22-77	Filed true copy of stip and order of USCA withdrawal of appeal.	
-7-77	Filed memo and order.... motion to recuse is denied.... motion to vacate discovery notic denied.....award atty fees in amt. of $7500 and [illegible] amt. totaling $074.38...Submit order on notice. [illegible]	
15-77	[illegible]	
-22-77	Filed Pltffs. notice of appeal to the 2nd Circuit U.S.C.A. from the order entered 3-30-77 dismiing deft. Touche Ross & Co., by I.Walton Bader and Independent Investor protective League of the sum of $8,074.38 denying the application made to recuse Hon. Richard Owen from further considerationof this matter, and vacating a notice of Deposition and Subpoena Duces tecum. Mailed all copies.	

(Continued)

DOCKET CONTINUATION SHEET

PLAINTIFF | DEFENDANT | DOCKET NO. 73 Civ. 3929 | PAGE 2 OF 2 PAGES

DATE	NO.	PROCEEDINGS	Costs
9-77		Filed order as to deft. Touche, Ross & Co. application denied. Motion to vacate notice of deposition, etc. and the deft. expenses are fixed as indicated, et cl. Order that pltff. Independent Inv. Research League and I. Walton Bader, Esq., pay defendant Touche Ross & Co. the aforesaid sum of $8,074.38, within 30 days from the date of this order; Clerk of the Ct. to enter final judgment. This order has no effect whatsoever on 73 Civ. 3929, the existing closed case, dated 5-5-77. Order to dismiss the entire action against deft. Touche Ross & Co. with prejudice and granting final judgment. .....Owen, J.	
11-77		Judgment entered, ...Clerk, 5-11-77	n/a
12-77		Filed amended Notice of Appeal from USCA, dated 5-12-77.	
17-77		Filed Amended Notice of Appeal from USCA dated 5-11-77.	
2-77		Filed pltff's Notice of Motion for a stay pending appeal on 6-16-77 at 2:15 P.M. Rm. 129.	
-7-77		Filed pltffs' notice of appeal to 2nd Circuit from order dismissing the complaint against deft. Touche Ross & Co. and awarding atty's fees against pltffs.& Walton Bader of $8,974.38, mailed copies.	
-8-77		Filed notice of filing of record (1st supplemental) to USCA	
8-77		Filed Notice of filing of cash deposit in lieu of Bond on Appeal by appellant's atty.	
-13-77		Filed deft. Touche Ross & Co. affdvt. in response to motion for stay of judgment without posting supersedeas bond.	
-15-77		Filed reply affidavit of Bader.	
16-77		Filed true copy of USCA order dismissing appeal for frivolousness and to award double costs and atty's fees granted; motion to grant double costs granted motion to award double attys fees denied.	
16-77		Filed sur reply affidavit of L Eno to I. Baders affirmation.	
24 77		Filed order of show cause for order modifying record on appeal to comply with rules of the Court. ret. 6 30 77 at 2:15Pm.	
-27-77		Filed affidavit of service of order to show cause on I. W. Bader on 6 23 77, by S. Kahn.	
6/30/77		Filed reply affidavit on motion to correct appeal.	
7-7-77		Filed Pltff's Replying Affdvt to Affdvt, of James K. Nevling, Jr., dated June 30, 1977.	
-7-77		Filed Deft. Touche Ross & Co., Rebuttal Affdvt. on behalf of deft. on motion to correct record on appeal.	
-27-77		Filed affidavit of Merril Sands agreeing to inclusion of documents.	
-1-77		Filed stipulation substituting copies of originally filed documents as part of the record on appeal.	
-1-77		Filed notice to docket clerk of transmission of supplemental record to USCA.	

Related action - see 3929.

JUDGE MAC MAHON

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date: by pltff 7-16-74

C. Form No. 106 Rev.

CLASS ACTION:

TITLE OF CASE	ATTORNEYS
HYMAN RADZANOWER, VS. TOUCHE ROSS & CO. TELEPROMPTER CORPORATION, JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN, H.J. SCHLAFLY, LEONARD TOW, R.B. TODD, JR. B.P. SIMON, J.B. GREEN, L.H. READ, R.G. WILSON, H. E. FLAHERTY B.D. FISCHMAN, BERLE ADAMS, MARVIN CARTON, R.F. LEWIS P.L. LOWE, CHARLES LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J. H. RICHARDSON, M.E. LIVINGSTON JACK WRATHER, AND 10-22-74 FIRST NATIONAL BANK OF BOSTON.	For plaintiff: IRA JAY SANDS, & Sidney A. Flores ~~701 Seventh Avenue, N.Y.C. 10036~~ ~~CO 5-3500~~ 515 Madison Ave. Suite 333 NYC 10022 688-4900 For defendant: ROSEMAN COLIN KAYE PETSCHEK FREUND & FRYE 575 Madison Ave-NYC 10022 (MU 8-7800) (for deft. Touche, Ross & Co.) SHEA GOULD CLIMENKO & KRAMER 330 Madison Ave-NYC 10017 (for deft. Teleprompter Corp)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO	REC.	DISB.
J.S. 5 mailed X	Clerk	7/16/74	Complaint	15	
		7/16/74	Summons		15
J.S. 6 mailed	Marshal	7/16/74	Docket	5	
Basis of Action: S.E.C. ACT. 1934	Docket fee	7/16/74	Affidavit		5
	Witness fees				
Action arose at:	Depositions				

-M-

(PAGE # 2)

74 CIV. 302

A-14

DATE	PROCEEDINGS	Date of Judgment
Jul 16-74	Filed Complaint. Issued Summons.	
Jul 17-74	Filed order that Fred Berman of 701 Seventh Avenue, is designated to serve the summons and complaint in the above entitled action, Clerk.	
July 25-74	Filed pltff's affdvt. of Ira Jay Sands and notice of motion for an order for class determination. Ret. 8-6-74.	
July 25-74	Filed pltff's memorandum of law in support of motion pursuant to Rule 23, FRCP	
Jul. 30-74	Filed stip & order extending deft. Touche Ross & Co's time to answer to 9-4-74. So ordered- CANNELLA, J.	
Aug. 2-74	Filed deft. Touche, Ross & Co.'s notice of taking deposition of pltff. on 8-13-74	
Aug. 2-74	Filed deft. Touche, Ross &Co's interrogs., first set.	
Aug. 5-74	Filed stip & order extending deft. Teleprompter Corp's time to answer from 8-4-74 to 9-4-74. So ordered- CANNELLA, J.	
Aug. 5-74	Filed stip & order that pltff's motion for class determination presently retable on 8-6-74 is adjourned to 9-6-74. So ordered- CANNELLA, J.	
July 25-74	Filed summons and affdvts. of service of Fred Berman of summons and complaint on defts. T.Ross &co. on 7-17-74, Teleprompter Corp. on 7-17-74-B.D. Fishman & Co.	Both &
Aug. 13-74	Filed affdvt. of Fred Berman dated 7-17-74 of copy of summons and complaint on Barry Simon.	
Aug. 13-74	Filed pltff's notice of taking deposition of deft. Barry P. Simon, etc. on 8-19-74.	
Aug. 13-74	Filed pltff's notice to produce documents.	
Aug. 15-74	Filed pltff's notice of taking depositions of the named defts. on the dates indicated.	
Aug. 15-74	Filed affdvt. of service of Fred Berman of summons & complaint on Marvyn Carton on 7-17-74.	
Aug. 19-74	Filed deft. Touche Ross & Co's affdvt. of Lawrence R. Eno and notice of motion for an order staying the depositions of all defts. by pltff, including the deposition of deft.Touche Ross & Co., etc. as indicated. Ret. 9-3-74	
Aug. 20-74	Filed deft. The First National Bank of Boston affdvt. of Philip A. Shaver and notice of motion for an order to dismiss as against said deft. Ret. 8-29-74	
Aug. 20-74	Filed memorandum of law in support of the motion of deft. The First National Bank of Boston to dismiss.	
Aug. 20-74	Filed pltff's notice of taking deposition of Marvyn Carton on 8-24-74	
Aug. 26-74	Filed pltff's affdvt. of Ira Jay Sands and notice of motion for an order directing the manner in which certain defts. in this action are to be served with the summons and complaint. Ret. 9-4-74.	
Aug. 28-74	Filed affdvt. of service of Fred Berman of a copy of the summons and complaint with Barry Simon on 7-17-74 and by service of mail to: Hubert J. Schlafly, Hugh E. Flaherty, Allen E. Puckett, John H. Richardson	
Sep. 3-74	Filed deft. Teleprompter Corp's affdvt. and show cause order to dismiss complaint and for protective order with a stay. Ret. 9-10-74 at 10:00 a.m. CONNER, J.	
Sep. 3-74	Filed Memorandum of deft. Teleprompter Corp. in support of motions to dismiss complaint and for protective order and application for stay of discovery.	
Sep. 3-74	Filed deft. Touche Ross &Co.'s answering affdvt. of Lawrence R. Eno	
Sep. 3-74	Filed stip & order extending the time for deft. Hubert J. Schlafly to answer to 9-24-74. So ordered- CANNELLA, J.	
Sep. 3-74	Filed stip & order that deft. The First National Bank of Boston's motion to dismiss retable on 8-29-74 is adjourned to 9-13-74. So ordered- CANNELLA, J.	
Sep. 4-74	Filed memo endorsed on motion filed 8-26-74. Motion denied without prejudice to renewal upon proper papers, pltff. having failed to comply with General Rule 9 of this court. So ordered- CANNELLA, J. (m/n)	

(CONT'D PAGE #3)

OLIDATED ACTION - SEE 73 Civ 3929
7. 3025-- MYMAN RADZANOWER -vs- TOUCHE ROSS & CO., et al

CIVIL DOCKET (PAGE # 3) MACMAHON, J.

DATE	FILINGS--PROCEEDINGS
p. 4-74	Filed summons and return-served the following:
	First National Bank of Boston by H. James Williams, Jr. on 7-29-74
	Raymond P. Shafer on 8-19-74
	Jack Wrather by Pamela Smith on 8-8-74
Sep. 5-74	Filed deft. Touche Ross & Co's notice of motion for an order, pursuant to Rules 12 (b) and 9(b) FRCP, dismissing the complaint. Ret. 9-16-74
Sep. 5-74	Filed memorandum of deft. Touche Ross & Co. in support of motion to dismiss complaint.
Sep. 5-74	Filed affdvt. of Lawrence R. Eno on behalf of deft. Touche Ross & Co. on the motion to dismiss the complaint by deft. Teleprompter Corp.
Sep. 5-74	Filed deft. Touche Ross & Co.'s supplemental answering affdvt. of Lawrence R. Eno on pltff's class action motion.
Sep. 5-74	Filed deft. Teleprompter Corp. affdvt. of Edwin J. Buckingham, III in response to pltff's motion for class action determination.
Sept.9-74	Filed stip. & order that all discovery of deft First Nat'l Bank of Boston is adjd until 10 days after date of entry of an order determining the motion of First Nat'l to dismiss.....Cannella, J.
Sep11-74	Filed response and objections of deft Touche Ross & Co. to pltffs Notice to produce documents.
Sep12-74	Filed Affidavit & Notice of Motion by deft. Hugert J. Schlafly for an order dismissing the complaint for failure to st te a claim upon which relief can be grante etc. as indicated rtble before C nnella J. on 9-20-74.
Sep12-74	Filed memo support of motion to dismiss.
Sep 12-74	Filed Endorsement & order that the within order of Conner, J. is hereby modified and amended so as to stay all discovery by pltff until deft. Teleprompter Corps motion to dismiss the complaint herein is heard and determindd. Cannella, J.
Sep13-74	Filed Notice of Appearance and Demand that defts. Allen E. Puckett and John H. Richardson hereby appear in this action and that the firm of Milbank, Tweed, Hadley, & McCloy appear as attys for same, and that all papers etc. be served on them.
Sep12-74	Filed Endorsement & Order: Pltffs application for the entry of a default judgment denied against deft Barry P. Simon. The Court exercises its discretion to renewal at such time as pltff has shown a meritorious basis for this law suit. Application denied withoyt prejudice, Cannella, J. M/N.
Sep13-74	Filed stip & order that the date on which defts. Allen E. Puckett & John H. Rochardson must answer etc, is extended to 9-20-74.
Sep16-74	Filed stip & order that and agreed by and between counsel, that the return date of all motions now pending before the Court is extended to 9-20-74 inclusivers, Cannel

74Civ. 3025 Carter

DATE	PROCEEDINGS
Sep19-74	Filed deft's (Ma rvyn Carter) Notice of Joinder in motion to dismiss the complaint.
Sep19-74	Filed pltffs affidavit in opposition to motion of First National Bank of Boston to dismiss.
Sep19-74	Filed pltffs memorandum of law in opposition to the motion by deft to dismiss.
Sep20-74	Filed Reply Memorandum of deft the First National Bank of Boston, insupport of its motion to dismiss.
Sept.23-74	Filed affdvt. of Ira Jay Sands in opposition to motion to dismiss the complaint by deft's Touche, Ross & Co. Teleprompter Corp. and H.J.Schlafly.
Sept.23-74	Filed memorandum of law of pltff in opposition to motions to dismiss.
Sept.23-74	Filed notice of motion of deft's Puckett and Richardson for an order dismissing the complaint...Ret. 9-30-74
Sept.23-74	Filed memo of deft's Puckett and Richardson in support of above motion.
Sep20-74	Filed stip & Order that the return date of various motions pending before the Court (Teleprompter Corp.) are adjourned to 9-20-74. Cannella, J.
Sep20-74	Filed stip & Order that the return date of various motion now pending etc, (deft First National Bank of Boston, are adjourned to 9-20-74. Cannella, J.
Sep20-74	Filed Affidavit of Service, by Steven L. Kroleski.
ep 20 74	Filed Pltff's response to Interrogs.
Sept.24-74	Filed pltff's notice of motion for order directing service summons and complaint. Ret. 9-25-74
Sept.24-74	Filed pltff's memorandum in support of above motion.
Sept.24-74	Filed additional affdvt. in opposition by pltff to motion to dismiss by First Nat'l Bank of Boston
Sept.25-74	Filed reply memo in support of motion of deft H.J.Schlafly to dismiss complaint.
Sept 26-74	Filed notice of reassign ment to Judge Mac Mahon.
Sep.25-74	Filed Stip & Order that reply papers on deft Touche Ross's motion to dismiss the compl't be served by 10-7-74.
Oct.1-74	Filed deft (Puckett & Richardson's) affdv. in opposition to pltffs class action motion.
Oct 3-74	Filed Pltff's affidavit in opposition to Defts Puckett & Richardson's motion to dismiss the complaint as to them.
Oct 3-74	Filed Memo of Law Of Pltff in opposition to motions by defts to dismiss
Oct.3-74	Filed pltffs response to deft's interrogs.
Oct.4-74	Filed deft (Touche Ross) reply affdvt on motion to dismiss.
Oct.4-74	Filed deft (Touche Ross reply memo in support of motion to dismiss the compl't.

CIVIL DOCKET Page #5

DATE	FILINGS—PROCEEDINGS
Oct.7-74	Filed deft (Touche) affdvt & notice of motion compelling plaff to respond to interrogs dated 8-2-74. Re. 10-11-74
Oct.7-74	Filed defts memo of law in support of motion to compel answers.
Oct.9-74	Filed defts (Shafer & Wrather) affdvt in support of motion to dismiss the complt.
Oct.22-74	Filed Memo-Endorsed on motion of 8-20-74. Deft First Nat'l Bank of Boston's motion to dismiss action on ground of improper venue is granted.....So Ordered, MAC MAHON,J. m/n
Nov 15-74	Filed Pltff's Notice of Appeal to USCAfrom an Order dated 10-21-74 dismissing this action against deft. First National Bank.....Notice Mailed 11-19-74. to: Debevoise, Plimptan, Lyons &Gates of 299 Park Ave.,NYC.
Nov 19-74	Filed Memo-End on back of motion filed 9-5-74..Motion withdrawn at pre-trial conference held on 10-4-74..So Ordered. MacMahon, J.
11-19-74	File Memo Endorsed on Deft's Touche Ross & Co filed 8-19-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered--MacMAHON,J.
11-19-74	Filed Memo Endorsed on Pltff's motion filed 9-24-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered -MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft's. Puckett & Richardson, filed 9-23-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. Macmahon,J.
11-19-74	Filed Memo Endorsed on Pltff's motion filed 7-25-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered - MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Hubert J. Schlafly motion filed 9-12-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered. MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Marvyn Carton motion filed 9-19-74. Motion withdrawn at pre-trial conference held on 10-4-74. So Ordered -MacMAHON,J.
11-19-74	Filed Memo Endorsed on Deft. Touche Ross & Co.. motion filed 10-7-74. Motion withdrawn at pre-trial conference held on 10-4-74. SoOrdered. MacMAHON,J.
Nov.19-74	Filed Order of Consolidation of 73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See 73 Civ 3929 for entry of order. m/n
Dec.16-74	Filed notice that original record on appeal has been certified & transmitted to the USCA.

Mar. 18-74 : OCT 4-74.

Mar. 6-75 Filed Amended endorsement & final judgment as to deft First Nat'l Bank of Boston, & the complt is hereby dismissed.....MAC MAHON, J Judgment Ent. 3-6-75, Clerk. m/b

Mar. 6-75 Filed Stip & Order that endorsement of J. MacMahon of 10-21-74 be amended, to contain a certificate as required under Rule 54(b) & judgment ent. Pltffs notice of appeal deemed amended to include appeal from amended endorsement & final judgment. Amended endorsement & final judgment as entered & this Stip. shall be incorporated & deemed part of the Joint Appendix now on appeal USCA #74-2538, with same effect as if originally set forth therin.....So Ordered, MAC MAHON, J

Mar. 24-75 Filed notice that second supplemental record on appeal has been certified & transmitted to the USCA.

May 29-75 Filed True copy of order from USCA that order of USDC is affirmed with costs to be taxed against the appellant....Clerk. Judg'mt Ent. 6-2-75. (No bill of costs or stat4ment attached)

6-27-75 Entered True Copy of statement of costs in the sum of $40.00 attached to Judgment #75,560. Judgment docketed on 6-27-75 on true copy of mandate of 5-29-75. M/N

8-27-75 Filed notice by pltffs atty of change of firm name & address, to : Ira Jay Sands Sidney A. Florea, 515 Madison Ave., Suite 333m NYC 10022 688-4900.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [signature]
Deputy Clerk

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:
11-14-73 by pltff.

73 CIV. 489

D. C. Form No. 106 Rev.

TITLE OF CASE

PHILIP HELLER AND WILMA P. GOTTLIEB ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED,

vs.

TELEPROMPTER CORP., JACK KENT COOKE, W.J. BRESNAN, AND J.D. WRATHER, JR.

ATTORNEYS 4-19

For plaintiff:
POMERANTZ, LEVY HAUDEK & BLOCK
295 Madison Avenue, N.Y. C. 10017
LE 2-4800

For defendant: (TELEPROMPTER CORP.)
SHEA GOULD GLIMENKO & KRAMER
330 Madison Avenue, N.Y.C.
10017 MO 1-3200
FOR DEFT. (WILLIAM J. BRESNAN) MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN 350 Fifth Avenue, N.Y.C. 105-1500

TRUBIN SILLCOCKS EDELMAN & KNAPP
375 Park Ave-NYC 10022 (PL 9-5400)
(for defts. Cooke & Wrather, Jr.)

MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN
350 Fifth Ave-NYC 10001 (565-1500)
(for deft. William J. Bresnan)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed X	Clerk		11/14/73	Pomerantz	15 —
			11/15/73	[illegible]	
J.S. 6 mailed	Marshal				
Basis of Action: S.E.C. ACT, 1934	Docket fee				
	Witness fees				
	Depositions				
	—5—				

(PAGE #2)

73 CIV. 499

A-20

Date	PROCEEDINGS	Date Order or Judgment Noted
Nov. 14-73	Filed Complaint. Issued Summons.	
Nov. 29-73	Filed pltffs' affdvt. and notice of motion for an order determining that this action can be maintained as a class action. Ret. 11-30-73.	
Nov. 30-73	Filed stip and order adjourning pltff's motion for class action determination to 12-14-73. So ordered- CANNELLA, J.	
Dec. 7-73	Filed stip & order extending deft's Teleprompter Corp. time to answer complaint to 12-18-73. So ordered- CANNELLA, J.	
Nov. 6-73	Filed affdvt. of service by marshal on notice of motion & brief upon Jack Kent Cooke by James Lacher on 11-26-73	
Dec. 6-73	Filed summons and return- served the following:	
	Teleprompter Corp. by Peter B. Gross on 11-16-73	
	Jack Kent Cooke by James Lacher on 11-26-73	
	W.J. Bresnan on 11-29-73	
	J.C. Wrather, Jr. by J.C. Wrather, Jr. a/k/a J.D. Wrather, Jr. on 11-21-73	
Dec. 12-73	Filed stip & order adjourning pltff's motion for class action determination to 1-4-74. So ordered- CANNELLA, J.	
Dec. 20-73	Filed stip & order extending deft. Teleprompter Corp's time to answer complaint to 1-4-74. So ordered- CANNELLA, J.	
Jan. 3-74	Filed stip & order adjourning pltffs' motion for class action determination to 1-11-74. So ordered- CANNELLA, J.	
Jan. 11-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 1-25-74. So ordered- CANNELLA, J.	
Jan. 14-74	Filed stip & order extending deft. W.J. Bresnan's time to answer complaint to 1-25-74. So ordered-CANNELLA, J.	
Jan. 18-74	Filed stip & order adjourning pltff's motion for class action determination to 1-25-74. So ordered- CANNELLA, J.	
Jan. 23-74	Filed Affidavit of Martin I. Shelton (atty for deft. Teleprompter Corp.)	
Jan. 23-74	Filed memorandum of deft Teleprompter in opposition to pltff's motion for Class action determination.	
Jan. 24-74	Filed pltffs reply memorandum in support of their motion for class action determination.	
Jan. 24-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 2-8-74. So ordered- CANNELLA, J.	
Jan. 24-74	Filed stip & order extending defts. Jack Kent Cooke and J.D. Wrather, Jr.'s time to answer to 2-25-74. So ordered- CANNELLA, J.	
Jan. 28-74	Filed deft's William J. Bresnan affdvt. of Robert Markevich in opposition to pltff's motion.	
Feb. 1-74	Filed stip & order- that pltffs' motion for a class action determination be held in abeyance, as indicated. So ordered- CANNELLA, J.	
Feb. 1-74	Filed pltffs' memorandum of law in support of their motion for a class action determination.	
Feb. 1-74	Filed stip & order extending deft. Teleprompter Corp's time to answer to 2-15-74. So ordered- CANNELLA, J.	
Feb. 1-74	Filed pltffs' interrogs.	
Feb. 14-74	Filed ANSWER of deft. Teleprompter Corporation to the complaint.	
Feb. 14-74	Filed ANSWER of deft. William J. Bresnan to the complaint.	
Feb. 14-74	Filed ANSWER of defts. Jack Kent Cooke and J.D. Wrather, Jr.	
Feb. 21-74	Pretrial conference held- Jacobs, U.S. Mag.	
Feb. 21-74	Filed pltffs' request to produce.	
Feb. 21-74	Filed deft. Teleprompter Corp's response to request to produce.	
Feb. 21-74	Filed defts' answers and objections to interrogs.	
Feb. 21-74	Filed defts. Jack Kent Cooke and J.D. Wrather, Jr's response to request to produce.	
Feb. 21-74	Filed pltffs' affdvt. of A. Arnold Gershon and notice of motion for an order allowing pltffs to serve and file their proposed amended complaint, a copy which is annexed as indicated. Ret. 7-29-74.	

CONT'D - PAGE #3

CIVIL DOCKET (PAGE # 3) MAC MAHON, J.

DATE	FILINGS--PROCEEDINGS	
July 24-74	Filed pltff's' memorandum in support of their motion to amend the complaint.	
July 24-74	Filed defts' answers and objections to interrogs.	
July 30-74	Filed deft. William J. Bresnan's response to request to produce.	
Jul. 30-74	Filed memo endorsed on motion filed 7-24-74. Pltff's within motion for an order granting leave to file and serve an amended complaint is granted. Motion granted. So ordered- CANNELLA, J. (m/n)	
Jul. 31-74	Filed defts' answers and objections to pltffs' interrogs.	
Aug. 2-74	Filed amended complaint.	
Aug. 28-74	Filed defts' answers and objections to interrogs.	
Sep. 10-74	Filed deft's (Teleprompter Corp.) ANSWER to AMENDED COMPLAINT.	SCCR
Sep16-74	Filed pltffs Notice to take deposition of the defts indicated.	
Sep19-74	Filed Amended ANSWER by defts. J Cooke and J.D. WratherJr to the amended complaint.	PSB
Sep26-74	Case reassigned to Judge Mac Mahon.	
Oct.2-74	Filed Amended ANSWER of deft (Bresnan) to the complt.	MRMS
Oct.9-74	Filed Memo-End. on unsigned Stip. This action has been ordered to be consolidated with 73 Civ 3929 for the purpose of unifying all procedures.....MAC MAHON,J.	
Nov. 19-74	Filed Order of Consolidation of (73 Civ 3929, 73 Civ 4109, 73 Civ 4133, 73 Civ 4895, 74 Civ 3025, (74 Civ 3281 for pretrial purposes only) & 74 Civ 4341. See Entry in 73 Civ 3929. m/n	

CIV 3281 [illegible]

CIVIL DOCKET MAC MAHO

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORT ENROLL (RETU
	ADDITIONAL ATTORNEYS			

A-22

Trubin Sillcocks Edelman & Knapp
375 Park Ave. NYC 10022 PL 9-5400
(Defts Jack K. Cooke, Jack D. Wrather, Ralph F. Lewis, Philip L. Lowe, Raymond P. Shafer & William J. Bresnam)

Milbank Tweed Hadley & McCloy
1 Chase Manhattan Plaza, NYC 10005 422-2660
(Defts Allen E. Puckett & John H. Richardson)

Anderson & Goldman
295 Madison Ave. NYC 10017 679-2400
(Deft John R. Barrington)

D. Barry Morris, Esq. Hall Dickler & Howley
460 Park Ave., NYC 10022
(Deft Hubert J. Schlafly)

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [illegible] Deputy Clerk

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE MAC MAHON

Jury demand date:

74 CIV. 3281

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
STEPHEN BUSH, as Admtr. C/T/A ALEXANDER BUSH, dec'd. Plaintiff -against- TELEPROMPTER CORPORATION, TOUCHE, ROSS & CO., JACK K. COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, BERLE ADAMS, MARVIN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK D. WRATHER, J. M. GARTENLAUB, J. R. BARRINGTON, LEONARD TOW, ROBERT C. TODD, JR., LESLIE H. READ, ROGER G. WILSON, HUGH E. FLAHERTY, BERNARD D. FISCHMAN, HUBERT J. SCHLAFLY, Defendants	For plaintiff: Kaufman, Taylor, Kimmel & Miller, 41 E. 1 St. N.Y.C. 10017 MU2-2983 For defendant: Rosenman Colin Kaye Petchek Freund F 575 Madison Ave. NYC 10022 Mu 3-78 Holtzmann Wise & Shepard 30 Broad St. NYC 10004 747-5500 (Marvyn Carton) Shea Gould Climenko & Kramer 330 Madison Ave. NYC 10017 Mo 1-37 (Teleprompter) Katz Leavy Rosensweig & Sindle 437 Madison Ave. NYC 10022 758-2500 (Leonard Tow)

-W-

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	DISB.
X	Clerk			7/30/74	Kaufman T	15 —	
				8/1/74	M Stream		15 —
	Marshal						

74 CIV 3281 STEPHEN BUSH, et ano. VS. TELEPROMPTER CORP., et al

JUDGE MAC MAHON

74 CIV. 3281

A-24

DATE	PROCEEDINGS	Date Order Judgment
ul 30-74	Filed complaint & issued summons.	
ug. 12-74	Filed Stip & Order extending to 9-4-74 time for deft to move or answer the complt.....MAC MAHON, J.	
ug. 13-74	Filed deft (Touche Ross) interrogs to pltff. (First set)	
ug. 13-74	Filed deft (Touc he Ross) notice to take deposition of pltff.	
ug. 15-74	Filed Stip & Order adjouring to 9-19-74 deposition of pltff, & time for deft (Touche Ross) to answer complt be adjourned to 9-30-74.....MAC MAHON, J.	
ug. 23-74	Filed Stip & Order extending to 9-30-74 time for deft (Schlafly) to answer the complt.....MAC MAHON, J.	
ug. 29-74	Filed Stip & Order extending to 9-30-74 time for deft (Carton) to move or answer re complt.....MAC MAHON, J.	
Sep. 9-74	Filed Stip & Order extending to 9-30-74 time for certain defts to move or answer the complt.....MAC MAHON, J.	
ep. 9-74	Filed Stip & Order extending to 9-30-74 time for deft (Tow) to move or answer the complt.....MAC MAHON, J.	
ep. 9-74	Filed Stip & Order extending to 9-30-74 time for deft (Teleprompter) to move or answer the complt.....MAC MAHON, J.	
ep. 13-74	Filed notice of appearance of Milbank Tweed, as attys for Allen E. Puckett & John H. Richardson)	
ept 13-74	Filed Stip. & Order that the time which defts. Allen E. Puckett & John H. Richardson may answer the complaint is extended to 10-15-74..MacMahon, J.	
ept 17-74	Filed summons with Marshall's return. Served:	
	Teleprompter Corp — by Barry Simon — on 8-1-74	
	Touche, Ross & Co. — by D. Charmack — on 8-5-74	
	Jack K. Cooke — by Mrs. J.K. Cooke — on 8-19-74	
	William J. Bresnan — by Mrs. Bresman — on 8-7-74	
	Berle Adams — by Mrs. B. Adams — on 8-6-74	
	Marvin Carton — by Mrs. Bryant — on 8-1-74	
	Ralph F. Lewis — by under door — on 8-1-74	
	Philip L. Lowe — by Sharon Davis — on 8-6-74	
	Charles Luckman — by Elsa Barrera — on 8-19-74	
	Maurice B. Mitchell — personally — On 8-22-74	
	Allen E. Puckett — By Mrs. Puckett — on 9-3-74	
	John H. Richardson — by Housekeeper — on 8-6-74	
	Monte E. Livingston — by Miriam McDonald — On 8-5-74	
	Jack D. Wrather — by Mrs. R. Granville — on 8-3-74	
	J.R. Barrington — by woman in house — on 8-5-74	
	Leonard Tow — by Mrs. L. Tow — on 8-12-74	
	Herbert J. Schlafly — by Mrs. Schlafly — on 8-2-74	
ep 16-74	Filed Stip. & Order that the deposition of pltff is adj. to 10-21-74...the time of the Pltff. to answer the interrogs of deft. Touche, Ross & Co is adj to 9-30-74... ..the time for the deft. Touche, Ross & Co to answer the complaint is extended to 11-5-74...MacMahon, J.	
p. 19-74	Filed pltffs answers to deft (Touche, Ross) interrogs.	
p. 23-74	Filed affdvt of service by Steven L. Kroleski of notice of appearance & demand on defts (Puckett & Richardson.)	
p. 23-74	Filed Stip & Order that time for deft (Leonard Tow) to move or answer complt is extended to 10-15-74.....MAC MAHON, J.	
. 1-74	Filed Stip & Order extending to 11-5-74, time for deft (Schlafly) to move or answer the complt.....MAC MAHON, J.	
. 2-74	Filed Stip & Order extending to 11-5-74 for deft (Teleprompter) to answer or move re complt.....MAC MAHON, J.	
. 4-74	Filed Stip & Order extending to 11-5-74 for defts Cook, Wrather, Lewis, Lowe, Shafer & Bresnan to answer the complt.....MAC MAHON, J.	

A TRUE COPY
RAYMOND

A-25

#43708

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

----------x

73 Civ. 4133

OPINION AND ORDER

OWEN, District Judge

This motion to impose sanctions raises two serious questions: (1) whether the attorney for the plaintiffsmailed copies of purported clients' answers to interrogatories to an adversary on the last day permitted by a court order without in fact having any originals of such answers in hand from any client or any awareness of their existence, and (2) whether the attorney thereafter made false statements to counsel and the Court and gave false testimony as to the foregoing.

Defendant Touche Ross & Co. ("Touche Ross") has moved for the imposition of sanctions against plaintiffs, the Independent Investor Protective League ("IIPL"), Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael"),

MICROFILM

Michael Fagan("Fagan") and their counsel, I. Walton Bader, pursuant to Rule 37(d) of the Fed. R. Civ. P. Sanctions are sought by virtue of circumstances disclosed in hearings held before me relating to the service on September 5, 1974 of copies of purported answers of plaintiffs to Touche Ross' Interrogatories dated November 1, 1973.

Touche Ross charges that plaintiffs and their counsel conspired to mislead Touche Ross into believing that the original answers to the November 1, 1973 Interrogatories had been received from plaintiffs Randolph, Michael and Fagan on September 5, 1974, prior to service of the copies when in fact they had not been received, and plaintiffs' counsel had no awareness even of their existence.

It is further charged by defendant Touche Ross that when, on September 11, 1974, it was disclosed that the original answer of Michael and Fagan had <u>not</u> been received on September 5, 1975, plaintiff IIPL and Mr. Bader misled Touche Ross and the Court into believing that the original answers of Randolph had been received on September 5, 1975, when they had not been, and further that unconformed copies of the proposed answers of Michael and Fagan had been served "inadvertently" by someone other than Mr. Bader.

As this motion involved serious allegations,

I held hearings on November 9, 13 and 14, 1974. I find the following facts.

The Events Prior To
September 6, 1974:

In February 1974, I held a status conference in this action. At that time, it was disclosed to me that answers to certain interrogatories propounded by Touche Ross dated November 1, 1973, were long overdue. I therefore orally directed Mr. Bader, counsel to plaintiff, to promptly answer those interrogatories.

Apparently nothing happened and six months later, on August 16, 1974, I granted a written motion by Touche Ross to compel each of the plaintiffs to respond to the interrogatories and directed that the order be complied with within 20 days, the 20th day being September 5, 1974, a Thursday.

The Events of Friday,
September 6, 1974:

On September 6, under postmark of September 5, Mr. Eno, a partner in the firm or Rosenman, Colin, Kaye, Petschek, Freund & Emil (the "Rosenman firm"), representing defendant Touche Ross, received in the mail a copy of purported answers of IIPL.[1] In a separate enclosure, also

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[1] The copy of the answers of IIPL bore the typed date September 5, 1974.

under postmark of September 5, copies of purported answers of individual plaintiffs Randolph, Fagan and Michael were received.[2] All of these copies were unconformed, except that the IIPL answers had written in, in the verification, the words, "s/Merrill Sands." Sands was the controlling officer of IIPL.

Mr. Eno that day mailed a letter to Mr. Bader requesting that the originals of the several answers be immediately filed pursuant to Rule 6(c) of the General Rules of this Court. The letter noted the failure to conform the copies of the several answers and requested information regarding the same, including whether they had actually been signed and sworn to by the several plaintiffs.

The Events of Monday,
September 9, 1974:

On Monday, September 9, at 9:15 A.M., Ms. Rosen, a receptionist in the Rosenman office, received a telephone message from Mr. Bader for Mr. Eno stating:

> "Rec'd your letter about Teleprompter case. Will send you photocopies of original Interrogatory answers within next few days."

---

[2] The copies of the answers of Randolph, Fagan and Michael each bore the typed date, August 29, 1974. These three plaintiffs lived in states other than New York and Mr. Bader apparently had prepared and mailed the proposed answers to each to consider, execute if appropriate, and return.

At 10:37 A.M., Mr. Bader called Mr. Eno again; Mr. Eno was not available to take the call, and Mr. Bader could not be reached when Mr. Eno returned the call.

Thereupon, Mr. Eno hand-delivered a letter to Mr. Bader. That letter stated:

> "Dear Mr. Bader:
>
> We today received a telephone message from you in response to my letters of September 6 and 7 in which you say that you will send us copies of the original Interrogatory answers 'within the next few days.' This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals and did not have them on September 5, 1974, and shall proceed accordingly."

The Events of Tuesday,
September 10, 1974:

On Tuesday, September 10, at 9:25 A.M., Mr. Eno's secretary received a telephone call from Mr. Bader, and typed up his message as follows:

> "Mr. Bader called. Re Interrogatories. He will be sending photocopies of original answers. He extends his apologies. He

will extend your time to answer for
2 1/2 or 3 weeks." [3]

About 10:30 A.M., Mr. Eno called Mr. Bader, and was told that he was unavailable. Mr. Eno then told Mr. Bader's secretary to have him call Mr. Eno as a matter of urgency, and that if Mr. Eno did not hear from Mr. Bader, he intended to communicate with the Court. Mr. Bader's secretary said that she would try to reach him. Thereafter, Mr. Bader's secretary called Mr. Eno back and stated that she had been unsuccessful in reaching Mr. Bader and asked Mr. Eno to wait until 1:00 P.M. before calling the Curt, to which Mr. Eno agreed. Mr. Bader called Mr. Eno at about 12:30 P.M. Mr. Eno told him he was not satisfied with the messages that he had been receiving and that he wanted to see the original answers of all the plaintiffs immediately. Mr. Bader said that Mr. Eno had a right to see them but that he was busy on a deposition and could not show them immediately, but would in a few days. Mr. Eno insisted on seeing them that day and told Mr. Bader that he did not believe that Mr. Bader had the originals. Mr. Bader then stated, "I have them. You can take my word

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[3] Mr. Bader does not dispute this message, except that he recalled saying "copies" rather than "photocopies."

for it." Mr. Eno said that he or Mr. Nevling would meet Mr. Bader in his office later that day after the deposition. Mr. Bader said that was not possible because he did not know where in his office the originals were and he might have left them at home. Mr. Eno said that he would then meet Mr. Bader in his office at 9:00 A.M. the next morning, to which Mr. Bader agreed.[4] Mr. Eno thereupon sent to Mr. Bader by hand the following letter:

---

[4] Mr. Bader, in testimony before me, at first did not recall this conversation at all:

> Q. You don't recall your conversation with me on September 10th when your secretary told you that you had better get in touch with me and you say you called me from the offices of White & Case? Do you remember that?
> A. I say I may have spoken to you, Mr. Eno. I don't recall the conversation.
>
> Q. You don't recall the conversation?
> A. No, sir.
>
> Q. At all? You have no recollection of that conversation?
> A. No, sir.

Later, his recollection was in part refreshed and he testified:

> Q. Did I answer you by saying I didn't want to take your word for it, I wanted to see them? Does that refresh your recollection at all?
> A. I believe you said something like that, yes, sir.
>
> Q. And did you --
> A. And I said I couldn't do it that day because I was tied up in depositions, it was late and I couldn't get back to the office, I didn't know where the originals were, I hadn't been in the office for several days, but if you came in bright and early the next morning I would be very happy to show them to you.

"Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Michael F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL."

The Events of Wednesday, September 11, 1974:

Early on the morning of September 11, Mr. Nevling went to Mr. Bader's office where he was shown the original answers of IIPL by Mr. Bader. They were dated September 5, 1974 and purportedly were sworn to on September 5, by Merrill R. Sands, as Secretary of IIPL, in New York County. Mr. Bader was the notary who took Sands' signature and the answers were also signed by Mr. Bader. Mr. Bader also exhibited the original answer of Randolph dated August 29, 1974 and purportedly sworn to on September 3, 1974 by Randolph in California; and the answers were also signed by Mr. Bader.

When Mr. Nevling asked for the answers of Fagan and Michael, Mr. Bader said that he could explain, and gave Mr. Nevling his affirmation dated September 11, 1974 which Mr. Bader had drawn to support a motion for extension of time to answer. The affirmation merely stated that the

answers of Fagan and Michael had not yet been received.[5]

Later that day, Mr. Eno sent a hand-delivered letter to the Court, with a copy to Mr. Bader. In that letter, Mr. Eno noted, among other things, that in his conversation with Mr. Bader the day before (September 10) Mr. Bader had assured Mr. Eno that he had the originals but that he did not know where the originals were in his office and that he might have left them at home.

Subsequently that day, Mr. Bader also sent a letter to the Court, with a copy to Mr. Eno. Therein he stated among other things:

> On September 5, he had Sands sign the IIPL answers and he, Bader, "instructed My Secretary to send copies . . . to all attorneys. . . .[6] and that he, Mr. Bader, inspected those copies

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5 That affirmation said nothing about copies of any answers being "inadvertently" sent to the Rosenman firm.

6 His secretary, one Dorothy Blacker, later testified that she did not mail out anything at all, and contradicted Mr. Bader's statement about any instructions to send copies.

> Q. Your testimony is that after you typed those Exhibits A,C,D and E[the answers to interrogatories] you had no conversation with Mr. Bader about those documents at all, is that correct?
>
> A. Correct.
>
> Q. Did he ever tell you that you should be on the alert to look for a letter coming from the people to whom you mailed the originals, that is, C,D, and E?
>
> A. No.

Similarly, Mr. Sands, who later testified that it was <u>he</u> who mailed the unconformed answers, also testified that Mr. Bader had <u>not</u> instructed him to mail any answers out (see Fn. 10 ,<u>infra</u>).

before they went out and they were "properly conformed."

In the afternoon of September 5, he had to leave his office for St. Louis, but before he left the office, Mr. Bader "prepared" copies of the answers which he intended to conform and mail when he returned from St. Louis.[7] "By inadvertence" on that day (September 5) "apparently" a set of the unconformed answers had been sent to the Rosenman firm. Further, on September 5 he was told during his absence from his office that "Randolph's answers" had arrived.

On September 9, again while he was out of the office, he was told about the receipt of Mr. Eno's letter of September 6 but did not know its contents. Believing that the Rosenman letter of September 6 referred to the answers of Randolph, Fagan and Michael, he called the Rosenman office on September 9 and 10, and the messages he left were to the effect that he "hoped to receive the signed copies of the original documents in a few days."[8] That it was not until about 6:00 P.M. on September 11, when he arrived in his office, that he "for the first time" realized what had happened.

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7 It should be noted that (a) these would in any event therefore have been late under the Court's order and (b) Mr. Bader did not in fact go to St. Louis on September 5. He later testified to having worked in the library of the New York Law Institute for several hours that afternoon so that he "missed his plane" to St. Louis, went home to Scarsdale and went the next morning.

8 Mr. Bader's testimony on this subject is set forth in Fn. 4 supra. This September 11 letter obviously differs from Mr. Bader's telephone message to Mr. Eno's secretary the prior day, September 10 (p.5-6 supra), the essential accuracy of which he did not dispute (see Fn. 3 supra).

Events Subsequent To
September 11, 1974:

Apparently, on September 17, 1974, Sands, Bader's client, executed an affidavit in which he stated that he was the one who had "inadvertently" mailed the unconformed copies of the Randolph, Fagan and Michael answers on a visit to Mr. Bader's office late in the day on September 5;[9] that prior to mailing them he had seen Randolph's answers "which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof."

On September 20, Mr. Bader addressed the Court on this matter on the argument of Touche Ross' motion to dismiss. At that time he made the following statements:

1. That he left his office on September 5 at about 3:00 P.M.

2. That Sands was with him when he left the office, and he told Sands that if the answers of the other plaintiffs

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[9] It should be noted that in October 1974, before the hearing, Mr. Bader wrote the Court a letter expressing concern at possibly not being able to have Mr. Sands' testimony to support the foregoing. This "problem" did not materialize and on the hearing it was revealed that Sands was Bader's brother-in-law.

came in he should mail out the copies.[10]

3. That after he left (at about 3:00 P.M.) Randolph's answers came in in the mail and that Sands had inadvertently mailed out all the answers instead of just Randolph's.

4. That Randolph's answers had come in in the 3:00 o'clock mail on September 5.[11]

5. That he did not recall when he first learned that the unconformed copies had been sent, but he knew that when he spoke with Mr. Eno on September 10.

Mr. Bader testified during the hearings held on November 4, 13, 14, 1974. At that time his final version of the facts was that Sands signed the original answers of IIPL in Mr. Bader's office between 8:30 - 9:30 A.M. on Thursday, September 5; that copies of those answers were put

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10 Sands, however, testified (1) that he spent the middle of the day downtown in New York City and came back to the office later after both Bader and his secretary had left; and (2) that Bader had not instructed him to mail out anything. See Fn. p. 13 infra.

11 Mr. Bader testified later that the last mail normally came in at 3:30 P.M. However, records of the U.S. Post Office revealed that the last mail carrier to Mr. Bader's office on September 5 had finished his deliveries and had returned to the post office by 2:07 P.M. The time of his last delivery to Mr. Bader's building, therefore, was 1:30 to 1:45 P.M.

in envelopes, labels were put on the envelopes, Sands took the envelopes to mail and immediately left the office.[12] Sands then testified that by arrangement, later in the day, after Bader and his secretary had both left, he went back to Bader's office. It was empty. He saw that Randolph's answer had come in in the late mail. He waited, and Bader telephoned from the library of the New York Law Institute, and, as he testified:

> I got a telephone call on 61, [Bader] called in at four, quarter after four, some time a little after four it was. And I said, you don't have to worry, the Teleprompter answers are here. He said fine, good. I said, go, have a good trip now. He said, good. That's it. Hung up.

Based on that conversation, which was devoid of any authority, Sands, the client, who had not been told

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12 The Interrogatories bear the typewritten date, September 5. Mrs. Blacker, who typed the Interrogatories, testified that she came to work at perhaps 10:20 and never saw Mr. Sands. She testified that she dates papers the day she types them and remembers no instructions otherwise as to these Interrogatories. I credit this testimony. The question therefore arises: if she typed the Interrogatories <u>after</u> her arrival on September 5, what of the Bader and Sands testimony that Sands signed and Bader notarized it and Sands took it away to mail <u>before</u> her arrival that day?

by anyone to mail anything,[13] allegedly took it upon himself, without notifying Bader, to take the envelopes from his lawyer's desk containing the unconformed copies of all the sets of answers of Interrogatories and mail

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[13] Sands testimony was as follows:

Q. And he [Bader]didn't tell you to mail them?
A. No, he didn't tell me to mail them.

Q. What induced you to mail them?
A. Because that's one of the reasons I went to his office in the morning was to sign so that my thing should be mailed out so I figured those had to go out.

Q. You had him on the telephone, he was on the telephone?
A. Right.

Q. Important matter. You didn't say to him, "Should I mail them out?"
A. No, I didn't.

Q. You didn't. And he didn't say to you, "Mail them out?"
A. He didn't tell me to mail them.

Bader's testimony was to like effect:

The Court: Mr. Bader, at 4:15, as far as you knew the three carbon copies were sitting on your desk?
The Witness: Yes,sir.

The Court: And that was the last day to mail?
The Witness: Yes,sir.

The Court: And you did not tell Mr. Sands, now you can conform them and mail them?
The Witness: No,sir.

them out, thus "inadvertently" causing the whole problem.[14] I reject this concocted story as I reject Mr. Bader's explanation that he was so busy that he never got to his office for the next several days to "learn" what had happened.

Rule 37 of Fed. R. Civ.P. provides that if a party fails to serve answers to interrogatories (particularly after a court order providing therefor) the court may dismiss the action and, in addition, require the party failing to act or the attorney for said party, or both, to pay the reasonable expenses, including attorneys' fees caused by the said failure to act, unless the court finds that the failure was "substantially justified or that other circumstances make an award of expenses unjust."

On the entire record before me, it is clear and I cannot but conclude that Mr. Bader intended the Rosenman firm to believe that the various answers to interrogatories

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14 Significantly, although Mr. Bader by September 11 was aware of the fact (1) that the Rosenman firm had raised serious questions with the Court as to a deception on his part, and that (2) certain papers had been mailed by someone from his office giving substance to these contentions, it was not until September 15, four days later, that, according to his brother-in-law Sands, he first spoke to him about the incident, and even more time elapsed according to his secretary before he spoke to her about the matter. The inference one feels compelled to draw is that since Mr. Bader knew that he himself had sent out the unconformed copies on September 5 without having secured the originals, the conversations with Sands and his secretary coming so much later were "window dressing" for the court hearing that was foreshadowed.

were due and timely served in accordance with the Court's order on the very last day for such service, September 5, 1974, when in fact they had not been. I also cannot but conclude that thereafter Messrs. Bader and Sands[15] made false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported "answers" to interrogatories on behalf of plaintiffs Independent Investor Protective League and Fagan, Michael and Randolph on September 5, 1974. Mr. Bader flatly conceded to Mr. Nevling on September 11 (and later to the Court) that the Fagan and Michael original answers had never been received.[16] Given Mr. Bader's story of leaving his office on September 5 at 3:00 P.M. (although

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[15] It is reasonably clear that Mr. Bader did not bring Mr. Sands into the picture as the "unknown mailer" until some time after his [Bader's] September 11 letter to the Court since in that letter he indicated that his secretary had mailed the copies in question. (See p.9-10 supra.)

[16] This September 11 admission is squarely in conflict with his undisputed earlier phone messages to Mr. Eno's secretary on September 9 and 10. (See Fn. 3 supra.)

subsequently changed) and the Post Office proof of the last delivery being before 2:00 P.M. on that day, obviously, the Randolph answers were not received by his office in the "late" or any other mail on September 5, the last day for service. They could only have arrived on a subsequent day. As to the answers of IIPL, I credit Mrs. Blacker's testimony from which I conclude that the IIPL answers dated September 5 were typed on that day at some point between 10:20 A.M. and 3:00 or 3:15 P.M. Given this, the testimony of Messrs. Bader and Sands to the effect that the IIPL answers were signed and notarized around 9:30 that morning is necessarily false. There being no credible evidence as to when these answers were thereafter, in fact, executed, I am unable to conclude that they were timely executed and served. I therefore dismiss the entire action as to Touche Ross with prejudice.[17]

Given the conduct of Messrs. Bader and Sands, I determine that plaintiff Independent Investor Protective League and attorney I. Walton Bader shall pay to the

[17] At some point during the pendency of this motion, voluntary discontinuances were filed on behalf of the individual plaintiffs.

defendant Touche Ross & Co. the actual expenses, including attorneys' fees, incurred by Touche Ross commencing with September 6, 1974, occasioned by this conduct. To that end, the attorneys for Touche Ross are to submit within 30 days in affidavit form a statement of such services rendered for the period commencing September 6, 1974, to which plaintiff IIPL and I. Walton Bader may respond, so that I may reach an appropriate conclusion on this issue.

The foregoing is so ordered.

While it is not germane to a determination of the motion of Touche Ross, it is not inappropriate to observe that conduct such as that engaged in by plaintiffs' counsel herein cannot and will not be countenanced by the Court. I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of attorneys.

United States District Judge

January 9, 1976.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs.

vs.

TELEPROMPTER CORP., et al.,

Defendants.

73 Civ. 4133 (LFM)

Before:

HON. RICHARD OWEN,
District Judge.

New York, November 4, 1974;
4.30 o'clock p. m.
(Room 2804)

APPEARANCES:

I. WALTON BADER, Esq.,
Attorney for Plaintiffs
274 Madison Avenue
New York, N. Y.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL, Esqs.,
Attorneys for Defendant
Touche Ross & Co.
575 Madison Avenue
New York, N. Y.;

BY: LAWRENCE R. ENO, Esq.,
MARVIN PICKHOLZ, Esq.,
Of Counsel.

THE COURT: Mr. Eno, we are here on the motion papers calling for a hearing on October 4th, is that the --

MR. ENO: That is correct, your Honor.

THE COURT: (Continuing) Is that the set of papers?

MR. ENO: Yes, sir.

THE COURT: And the parameters of this as you see it are what?

MR. ENO: Well, the question that I understand we have the hearing on, your Honor, were the circumstances under which this purported answers to interrogatories of the plaintiff Randolph received.

THE COURT: Very good.

MR. ENO: And there have been statements made to the Court and affidavits submitted to the effect that they were received in Mr. Bader's office on September 5th, 1974.

THE COURT: Very good.

MR. ENO: And the question is whether they were received on that day. In that connection I would like to examine Mr. Bader, if I may, your Honor.

MR. BADER: Certainly. But do you want me first or do you want Mr. Sands first?

MR. ENO: I would like you first.

MR. BADER: By all means. Of course.

This is a rather new experience for me, Judge. I must tell you this is the first time I have been in the witness box.

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I. W A L T O N B A D E R , called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q You are an attorney at law, Mr. Bader?

A Yes, sir.

Q You are a member of the bar of this Court?

A Yes, sir.

Q Are you the general counsel of Independent Investor Protective League?

A Well, I suppose you might call me that.

Q Well, don't your papers indicate that you are the general counsel of the Independent Investor Protective Lague?

A I have signed several papers like that, yes, but I am general counsel only by sufference of the board of directors.

Q Well, are you or are you not the --

THE COURT: Mr. Eno, let me have the clerk move this little rail away so that you can come around here a bit. Just so that the witness is not facing away from you.

THE WITNESS: Mr. Eno, as far as I know I am general counsel to the Independent Investor protective League today, but as of tomorrow I could be fired.

Q But today you are still the general counsel?

A Yes, sir.

Q Is your secretary here today?

A No, sir.

Q Do you know that we requested her presence and served notice on you asking for her to be here?

A Yes, sir, ant it's completely unnecessary because I have examined her very thoroughly about this and she knows nothing about the facts involved. As a matter of fact, I have an affidavit from her to that effect. She is a part-time secretary, she works only Tuesday, Wednesday and Thursday, and under those circumstances I did not think it was necessary to have her.

MR. ENO: I would like teh Court to take notice that we requested her presence and we served notices for her to be here today. I think her testimony is essential.

THE COURT: I will give consideration to that at

the end of the hearing.

Q Is Mr. Sands here today?

A Yes.

Q Who is Mr. Merrill Sands?

A Mr. Sands is the secretary of the Independent Investor Protective League, sir.

Q What is his occupation?

A Perhaps you ought to ask him that.

Q No, I am asking you.

A As far as I know he is a real estate broker in Brookfield Center, in addition to being secretary of the Independent Investor protective League.

Q Where is Brookfield Center?

A In Connecticut.

Q Do you know his address?

A I believe, but again, Mr. Sands is here -- Mr. Sands, could you give me your address?

MR. ENO: Your Honor, will you please direct the witness to answer my question?

THE COURT: Mr. Bader, you field these as best you can. If you don't know --

THE WITNESS: I'm sorry, your Honor, but I am under oath and I want to be absolutely sure I am accurate.

I hope your Honor understands.

THE COURT: If you don't remember the address, the answer is, I don't recall.

THE WITNESS: I think it's Pritton Hill Road, in Brookfield Center.

Q I show you a copy of a set of answers of Independent Investor protective League and ask you whether you can identify these as a copy of the answers (handing).

A They certainly look like it, sir.

Q Can you identify them?

A They certainly are.

MR. ENO: Your Honor, shall we mark these?

THE COURT: Yes.

(Defendants' Exhibit A was marked for identification.)

BY MR. ENO:

Q The original of those answers, were they signed by Mr. Sands?

A Yes, sir.

Q Were you the Notary Public that took his signature?

A Yes, sir.

Q Did you take his signature on September 5th, 1974?

A Yes, sir.

Q Where was Mr. Sands when you took his signature?

A In my office, sir.

Q At what time of the day did You take his signature?

A It was early in the morning, sir. I think it was somewhere between 8.30 and 9.30. I can't pinpoint the time exactly.

Q Did Mr. Sands remain in your office after he signed these?

A No, sir. Mr. Sands told me --

Q Where did --

A (Continuing) Prior to this hearing what the facts and circumstances were, actually --

Q Just please answer the question as best you can as I put it to you from your recollection.

A Present recollection --

Q I can only ask you --

A My recollection at the time that I wrote certain letters.

Are you talking about my present recollection?

Q Please just answer my question.

How long did Mr. Sands remain in your office after he had signed Exhibit A?

A Well, we had to put those in envelopes, I had to stamp envelopes, my secretary wasn't in the office at the time, I had to put labels on that to send to the various other attorneys, and then I believe I gave those to Mr. Sands. Mr. Sands took those documents with him, and I believe mailed them, but I mean I have no knowledge of what he did.

Q What time did he leave your office?

A I'd say about 9.30.

Q You certified in these answers that you mailed them, didn't you?

A Yes, sir.

Q You now say Mr. Sands mailed them?

A I gave them to Mr. Sands. I consider that to be mailing on my part.

Q What time did your secretary come to the office on September 5th?

A About 10.30, sir.

Q Do you have any record as to when she came?

A No, sir, but those are her normal hours.

Q Did you give any instructions to your secretary with regard to these answers which are Exhibit A?

A Well, I had thought originally --

Q No, please answer my question. Did you?

A YOu mean on September 5th?

Q Yes.

A No.

Q Now I show you a letter dated September 11, 1974, and I ask you whether you wrote the original of this letter (handing).

It is addressed to Judge Owen?

A Yes, sir. I certainly did. That's my signature.

MR. ENO: I would ask that that be marked for identification.

(Defendants' Exhibit B was marked for identification.)

xx BY MR. ENO:

Q In this letter you said, referring to the date of September 5th, 1974, and to these answers which had been marked as Exhibit A:

"I further instructed my secretary to send copies of the answers to interrogatories executed by the Indepdndent Investor Protective League to all attorneys for the defendants."

A Yes, sir, I wrote that, but that was not September 5th.

Q I beg your pardon? Then I will read this

paragraph --

A I'm familiar with the paragraph, sir.

Q Perhaps the Judge is not:

"On September 5th, 1974, I had Mr. Merrill Sands, the secretary of the plaintiff Independent Investor Protective League, sign the answers to interrogatories. I further instructed my secretary to send copies of the answers to interrogatories executed by the Independent Investor Protective League to all attorneys for the defendants.

"I inspected those before they went out. They were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

"In the afternoon of September 5th, 1974 I had to leave the office for St. Louis, Missouri."

A That's right.

Q Did you not tell the Court in this letter that you had instructed your secretary to mail those answers?

A I don't think that that means that at all. The fact is that when I did write that letter I had really thought that my secretary had mailed those things out. After checking with Mr. Sands I discovered that he was the one who mailed them.

MR. ENO: Would your Honor like to see this?

THE COURT: I have the original here that was sent to the Court.

Q Now I show you three answers, purported answers to interrogatories, one by Mr. Martin F. Randolph, one by Michael Fagan and one by Gary Michael, and I wonder if you can identify those as unconformed copies of their answers (handing).

A Yes, sir. Yes, sir.

MR. ENO: I ask that these be marked, your Honor.

(Defendants' Exhibits C, D and E were marked for identification.)

xx BY MR. ENO:

Q At the time when you say you gave Mr Sands these -- the answers to mail, where were these unconformed copies?

A I believe on my desk in my office.

Q After Mr. Sands left what did you do with respect to these unconformed copies?

A I left them on my desk when I left.

Q What time did you leave the office?

A I'd say about, somewhere between -- I can't tell you exactly. It was somewhere between 12 and 2 o'clock. I can't pinpoint it any closer than that.

Q Where were they when you left your office?

A On my desk in an open envelope, sir.

Q In an open envelope?

A Yes, sir.

Q What kind of an envelope?

A I believe a white business envelope.

Q Did you give your secretary instructions about any of these answers?

A No, sir.

Q You did not?

A No, sir.

Q You knew that September 5th was the last date on which you could serve the answers to interrogatories, didn't you?

A Well, I certainly knew that that was what they called for by the order of the Court, yes, sir.

Q And you gave your secretary no inseructions with respect to these unconformed copies?

A No, sir. I had not received any answers to interrogatories from any of these people when I left, and it would have been impossible for me to have mailed those out. I could not have conformed them. I would have been committing perjury if I had done that.

Q So when you left you gave your secretary no

instructions with regard to that?

A No, sir.

Q Now I show you a letter dated October 9, 1974 from you to Judge Owen and I ask you whether you can identify a copy of that letter as a copy of the original that you sent (handing).

A Yes, sir. Yes, sir.

MR. ENO: May I have that marked, please?

(Defendants' Exhibit F was marked for identification.)

xx BY MR. ENO:

Q In this letter of October 9th to Judge Owen you said the following;

"My secretary typed the original interrogatories to the plaintiffs, Martin Randolph, Jr., et al., and mailed them. She put into the file the copies of the interrogatories and attached a note to the file indicating that all the copies were to be retained until the original answers were received so that the copies could be properly conformed and mailed to all of the attorneys.

"That is the last my secretary saw or heard of this matter."

Is that correct?

A That is correct. When I wrote the letter that is what I thought the situation was. I subsequently went over it very thoroughly with both my secretary and Mr. Sands and I found out that it was Sands who had actually mailed those Independent Investor Protective League interrogatories, sir.

Q And your secretary didn't put into the file the interrogatories --

A She certainly did.

Q She took them from your desk?

A No, sir. I think that you are mininterpreting what I said.

Q Well, tell me what you said?

A I said that when she typed the original copies, which goes far back beyond the time of September 5th, she put the copies in the file. Obviously she couldn't have mailed them until the copies were conformed and signed.

Q I see.

Now, did anything happen in this matter between the time that you gave Mr. Sands the copies to file, the interrogatories to mail out, the copies to mail out, and the time you left your office?

A Well, lots of things happened. First of all --

Q With respect to this matter?

A Oh, yes. Yes, sir.

Q What happened?

A First of all I had not received, by the time Mr. Sands had left, the copies of the answers -- the originals of the answers to interrogatories, with the exception, of course, of Independent Investor Protective League which Mr. Sands had signed in front of me.

I told Mr. Sands when he left to please come back to my office at 4 o'clock and find out if these interrogatories would come back, come in in the second delivery, because if they did I would have two days to file them under the local rules of this court.

I told him nothing, of course, about mailing these things, and these things were not mailed as far as I knew when I left the office. They were sitting on my desk.

Q Your secretary was in the office the entire day, was she not?

A No, sir, she leaves at 3.30.

Q So she was there until 3.30?

A Yes, sir.

Q You didn't speak to her about these things at all?

A No, I did not, because our last mail delivery comes in just around 3.30. My secretary very rarely looks at the mail. She more or less is busy typing and, therefore, I asked Mr. Sands to do it.

Q You say your last day mail delivery is at 3.30?

A Normally it's around 3.30. The Post Office Department says 1.30 to 2.30. Normally the deliveries come in late.

Q What was your purpose in asking Mr. Sands to come back to look for those things?

A Because if those things had not come in on September 5th it would have been necessary for me to make a motion for an extension of time with respect to filing those answers. And I had intended to do that promptly on Monday morning if the answers did not come in by that time.

Q You intended to be back by Monday morning, didn't you?

A Yes.

Q So what did you need Mr. Sands for?

A I wanted to know if they had come in.

Q What difference would it make, you would find out Monday morning, wouldn't you?

A That would be three days later.

Q What would you have done if you found out on September 5th they hadn't come in?

A At least I'd know it.

Q You knew it, but you knew that two of them never came in, didn't you?

A Two of them never came in, no, sir.

Q Did you make the motion?

A I made the motion with respect to two of them, yes, sir.

Q When?

A On September -- I believe on September 11th.

Q That wasn't the Monday, was it?

A No, sir, but my schedule got messed up. If you would let me tell you I could explain to you exactly what had happened during the period.

Q Just let me ask the questions, please.

A Go right ahead.

Q In your letter of September 11 to the Court you said you had prepared the copies of the interrogatories which you intended to mail and to conform as soon as you came back from St. Louis: is that correct?

A Yes, sir, that is absolutely correct.

Q Where did you go when you left your office on September 5th?

A The library of the New York Law Institute, sir.

Q How long did you stay down there?

A I'd say I stayed there from about, whenever I arrived, and that could have been any time from about 12.30 to 2.30, until about 7 o'clock.

Q What time did you leave for St. Louis?

A I attempted to leave for St. Louis at 7 o'clock, sir, and I missed the plane.

Q So you say you left your office at no later than what time, 12.30?

A No later than two.

Q No later than two. And you left for St. Louis at seven?

A Yes, sir.

Q Did you call your secretary to ask her whether these answers had come in?

A I called Mr. Sands, sir.

Q Did you call your secretary?

A No, sir.

Q Did you call Mr. Sands?

A Yes, sir.

Q At what time did you call Mr. Sands?

A About a quarter after four.

Q What did Mr. Sands tell you?

A He said the Teleprompter answers had come in, there was nothing to worry about.

Q The Teleprompter answers had come in?

A Yes, sir.

Q Did you ask him which answers had come in?

A No, sir.

Q He just told you the answers came in?

A I got the message, I was very rushed at the time, I just hung up the phone and I was very pleased that that had happened, and that was it.

Q You were expecting three answers; is that correct?

A Yes, sir.

Q One from California?

A Yes, sir.

Q One from Connecticut?

A Two from Connecticut, sir.

Q Two from Connecticut.

A Yes, sir.

Q Two from Connecticut?

A Yes, sir.

Q And you didn't ask him when he said the Teleprompter answers came in which answers had come in?

A No, sir, I did not.

Q Did you give him any instructions?

A No, sir.

Q You didn't tell him to mail the unconformed copies?

A No, sir.

Q You didn't tell him anything, that's all, he told you that they had come in and that was it?

A Yes, sir.

Q Did he tell you when he had gotten back to his office?

A When who had gotten back to his office?

Q When Mr. Sands had returned to your office?

A Wait a minute, I am confused.

Q Did Mr. Sands tell you at what time he had come back to your office that day, September 5th?

A Well, he obviously came back at 4.15 because I called him there and he answered the phone.

Q How long before 4.15 had he come back?

A I don't know, sir.

Q You didn't ask him?

A I didn't ask him, no, sir.

Q And he didn't tell you?

A No, sir.

THE COURT: Mr. Bader, at 4.15 as far as you

knew the three carbon copies were sitting on your desk?

THE WITNESS: Yes, sir.

THE COURT: And that was the last day to mail?

THE WITNESS: Yes, sir.

THE COURT: And you did not tell Mr. Sands, now you can conform them and mail them?

THE WITNESS: No, sir.

THE COURT: Was there any reason for that?

THE WITNESS: Well, first of all I didn't think that Mr. Sands would be qualified to conform mail copies. He is not a lawyer.

THE COURT: How far is the library from your office?

THE WITNESS: It's about twenty minutes by subway, sir.

THE COURT: All right, go ahead.

BY MR. ENO:

Q You say the last delivery of mail is at 3.30 and your secretary leaves at 3.30?

A Yes, sir.

Q And you didn't call your secretary to find out whether the answers came in?

A No, sir.

Q And you didn't tell your secretary to look for

the answers at all?

A No, sir.

Q I show you a copy of an affidavit, Mr. Sands, dated September 17, 1974, and I ask you whether you were the Notary on that affidavit (handing).

A Yes, sir.

On September 17, 1974, sir.

Q You drew that affidavit?

A Yes, sir.

Q Where was it drawn?

A The affidavit was drawn in my office in New York, sir. Mr. Sands lived in Brookfield Center. Actually I think the venue of this affidavit is wrong. It should be Westchester.

Q Would you just answer my question?

Where was the affidavit drawn?

A In my office, sir.

Q On your typewriter?

A I believe -- oh, wait a moment. You are right. This was drawn on a typewriter that I have at 40 Morrow Avenue, Scarsdale, New York, which is an apartment which I occupy. Yes, sir. That was not drawn during office hours. You are right.

Q Who typed the affidavit?

A I did, sir.

Q Yourself personally?

A Yes, sir. I recognize the type now. That's a Selectric typewriter, sir.

Q Where was it executed by Mr. Sands?

A At the A & P Supermarket, right off Route 687, I believe it is, in in Golden's Bridge.

MR. ENO: Would you mark that, please.

(Defendants' Exhibit G was marked for identification.)

BY MR. ENO:

Q In your letter of September 11 which has been marked as Defendants' Exhibit B you stated:

"By inadvertence on September 5th, 1974, apparently a set of unconformed answers to interrogatories were sent to the attorneys for Touche Ross but were not sent to the other attorneys. Meanwhile I was told on September 5th, 1974, during my absence from the office, that the answers to the interrogatories by Randolph had arrived."

A Yes, sir.

Q Were you told that the answers of Mr. Randolph had arrived?

A You have to understand when that letter was

written, sir, --

Q No, no. Please answer me.

A I was told that the Teleprompter interrogatories had arrived on September 5th. On September 11th, sir, when that letter was written I had already seen your letter and I had already known the facts by September 10th, and at that point I knew immediately that the interrogatories of Fagan and Michael had not arrived, so that Mr. Sands' message to me, which at the time that I know that letter involved only Randolph, I had thought earlier involved all the interrogatories.

Q Did you sign in at the New York Law Institute?

A I may have or I may not. Sometimes I sign, sometimes I don't, sir.

Q What were you doing down there?

A I was working on a problem for Bert Shostak in St. Louis, sir, involving a case that he and I are working on, the Pennzoil matter, involving the question whether a no-action clause in a debenture is enforceable against an action brought against the debentureholders under the laws of the State of New York. And whether the Securities Act and the Trust Indenture Act also changes the laws of the State of New York, and I frankly got terrifically engrossed in the problem and I still don't know the answer.

Q How long did you stay in St. Louis?

A I stayed in St. Louis until Saturday evening, sir.

Q When did you next come back to your office?

A I didn't come back to my office -- well, let me see.

Would you mind if I give you my itinerary?

Q I would just like an answer when you came back to your office?

A Well, I think I didn't come back Until the evening of September 10th, but I would like to go over the itinerary to make sure that's correct.

THE COURT: Why don't you check it out in your mind then give us the bottom line.

THE WITNESS: All right.

A Let me see. Let me see, your Honor. September 9th I was in the Ambassador Club, then in Washington, Washington on the 9th, get back on the 10th, depositions, yes, I came back to my office about, I think 6 or 6 p.m. on September 10th, somewhere around that neighborhood.

THE COURT: Did you get a later plane for --

THE WITNESS: No, sir. I missed the 8.05 to St. Louis which is a plane I normally take which requires

a change of planes in Indianapolis, and I missed that plane and there aren't any more after that, except something that gets you in in the wee small hours of the morning. So I went back to Scarsdale and I took the 7 o'clock plane out the next day.

Q You called my office on the early morning of September 9th, did you not?

A Yes, sir, from the Ambassadors Club at La Guardia Airport, TWA.

Q What time did You call?

A Somewhere around ninish, sir. I don't know exactly.

Q Was your secretary in the office then?

A No, sir.

Q Had You been in your office on Sunday?

A No, sir.

Q Or Saturday?

A No, sir.

Q The preceding Saturday or Sunday?

A No, sir.

Q So you hadn't been in your office at all?

A No, sir. But I knew about the letter you wrote?

Q You did?

A Yes.

Q How did you know?

A Mr. Sands told me.

Q How did Mr. Sands know about my letter?

A Because I saw him on Sunday in Connecticut, Mr. Eno, and I asked him if he could please stop in the office and look at the mail because of the fact that I was going to be out of town an extra day, that I had not expected, this matter in Washington involving United Gas Line Pipeline was something that I had no idea was going to happen.

I asked Mr. Sands to stop in and read me the return addresses, he told me that you had written me a letter and I had assumed at that time that that was probably because I hadn't served you copies of, at that time I thought they were the Randolph-Pagan and Michael interrogatory answers, and, therefore, I called you and I told you to please give me a couple of days, I'm jammed up and I will get them over to you.

Q When after you spoke to Mr. Sands on the telephone from the Law Institute, when did you next have a conversation with him?

A That Sunday, sir, in Brookfield Center.

Q You were in Brookfield Center on Sunday?

A Yes, sir.

Q And you asked him to do what?

A I asked him to -- if he could please come down to my office and check my mail, because I hadn't been there on Thursday afternoon, I hadn't been there on Friday, I hadn't been there on Saturday and we do get a Saturday mail delivery, and I wasn't going to be there on Monday.

On Tuesday I was involved in depositions, and I wanted to at least see if somebody had served me some motion papers or something of that kind. I gave him a key to my office and asked him to check the mail for me.

Q What time did you speak to him? Did you speak to him on Sunday?

A I spoke to him at his home, yes, sir, on Sunday.

Q He had been to your office on Sunday?

A No, he was up to my office on Monday, sir.

Q What time did he get to your office on Monday?

A I guess somewhere early in the morning, because I know that I called Him around 9 o'clock and he was there.

Q You don't know what time he got there?

A No, sir.

Q What plane did you take to Washington?

A I took the 11 o'clock Southern Airways, sir.

Q Southern Airways at 11 o'clock?

A Yes, sir.

Q Where were you at 9 o'clock?

A TWA Ambassadors Club, LaGuardia Airport.

Q Waiting for your plane?

A No, sir. I wanted to make some telephone calls at that particular point to people that I hadn't spoken to the week before and TWA Ambassadors Club is a very nice place to do it. I couldn't have done it in my office, I couldn't have made the plane. And I couldn't have made my appointment in Washington in the afternoon, so I went to the Ambassadors Club and I made my phone calls from there.

Q What time was your appointment in Washington?

A Approximately I believe 1.30, sir.

Q And you took an 11 o'clock plane to be there at 1.30?

A Yes, sir.

Q And you didn't get to your office at all on Monday?

A No, sir.

Q What time did you get back from Washington?

A I didn't.

Q You stayed overnight?

A Yes, sir.

Q Where did you stay?

A Holiday Inn -- well, I think they call it the Jefferson Davis Highway, right off Crystal City where the

Patent Office is.

Q Who were you meeting in Washington on Monday?

A About twenty attorneys.

Q Where?

A I believe it was the offices of United Gas Pipeline, but I don't want to take an oath on that, sir. I know that it was a meeting that was held in connection with the settlement of a lawsuit, and I can tell you the lawsuit, but I don't want to either specify the address, or the person's office. I just don't recall.

Q Who did you meet with on the next day in Washington

A I didn't. I came back on the 7 o'clock air shuttle.

Q Seven in the morning?

A Yes, sir.

Q Where did you go when you came back?

A I went immediately to the offices of White & Case where I was involved In depositions.

Q Did you call my office on the morning of -- on that Tuesday morning?

A Yes, sir, I did.

Q The 10th?

A Yes, sir, I did. I gave the same message that I gave you on Monday.

Q How did you know to call my office on Tuesday?

A You weren't in on Monday and I thought I could get to talk to you on Tuesday.

Q Did anybody tell you I had sent a letter on September 9th?

A No, sir.

Q You didn't speak to your secretary?

A I spoke to my secretary later on in the day, but I don't believe she menioned the September 9th letter at that point.

Q And you didn't speak to your secretary at all between the time you had left on Thursday and the time you came back to Your office on Tuesday; is that correct?

A No, that's not so. I did speak to her. I spoke to her once.

Q When?

A She had told me that -- I don't know the time of day, but I know that I had called you, and you were out, and then you had called her and said that unless I made those interrogatory answer originals available to you on Wednesday morning -- that was Tuesday, that would be the next morning -- at 9 o'clock, that you would ask Judge Owen to make an investigation of the cifcumstances involved, and that you felt it was unprofessional practice on my part.

1 That's the messsage you leftwith my secretary.
2 My secretary --
3 Q When did you --
4 A Please let me finish.
5 Q Sorry.
6 A (Continuing) My secretary called me and told
7 me about that and said, you had better do something about
8 this. This man is mad. She called me at White &
9 Case and interrupted a deposition because she knew I was
10 there. Then I may have spoken to you, Mr. Eno, later on
11 in the day, or I may not. I just don't recall at this
12 point.
13 Q When you called my office on the morning of
14 September 9th had Mr. Sands told you what was in my letter?
15 A No, sir.
16 Q He never told you what was in the letter?
17 A No, sir.
18 Q Had he opened the letter and read it?
19 A You're asking me about my present knowledge, or
20 my knowledge at that time?
21 Q I am asking you for your best recollection?
22 A My best knowledge is he didn't open the letter
23 because I discussed this matter with Mr. Sands prior to
24 this testimony.
25

Q And you didn't ask him to open it and see what was in the letter?

A No, sir.

Q What was the message that you left in my office on Monday morning?

A That I would send you copies of the original interrogatories. I thought you were talking about Randolph, Fagan and Michael in a couple of days, and that I was out of the office and hadn't come back and, therefore, I hadn't seen them yet. And would you please be indulgent to me, and I would extend your time to do anything that you wanted under the circumstances.

Q How did you know on the basis of what you just said that my letter had asked to see the original of those answers?

A I didn't.

Q You just assumed it?

A No, I knew I hadn't sent them to you. I knew the only --

Q Well, how did you know what was in my letter?

A I didn't.

Q At the time that you left the message in my office, as far as you knew the only thing that had happened was the teleprompter answers had arrived; is that right?

A And I hadn't received --

Q Now wait a minute, please. The Teleprompter answers had arrived and nothing had been sent to me. You didn't --

A Oh, yes, I certainly knew something had been sent to you. The answers of Independent Investor Protective League had been sent to you.

Q But you didn't know that the others had been sent to me?

A No, sir.

Q Is that right?

A That's correct.

Q Then how did you know to leave the message in my office that you were going to --

A Because I knew that what you were talking about when you had written a letter to me, I had assumed you were complaining about something and I had assumed that your complaint was that I hadn't served you original answers of the other three people involved.

Q I show you a message slip and I ask you whether this is the message that you left in my office on September 9th handing).

A Yes, sir. A fairly -- I don't know whether it's accurate as to what I said, but substantively, yes, I

said I would send you copies. I don't think I said photocopies, I think I said copies.

MR. ENO: Would you mark that, please.

(Defendants' Exhibit H was marked for identification.)

THE WITNESS: And I think I may have said, I may have also said, Mr. Eno, of the three individual plaintiffs. That may have been in there too.

Q I show you a copy of a letter dated September 9, Mr. Bader, and I ask you whether that is a copy of a letter that you received from me (handing).

A Yes, sir.

MR. ENO: I ask that that be marked, your Honor.

(Defendants' Exhibit I was marked for identification.)

BY MR. ENO:

Q Now I show you another message slip and I ask you whether this is the message that you left in my office on September 10 (handing).

A I believe I said copies rather than photocopies, and I think it was the original answers of the three individual plaintiffs, and other than that I think the message is accurate.

MR. ENO: I ask that that be marked.

(Defendants' Exhibit J was marked for identification.)

BY MR. ENO:

Q I show you copies of two letters, one dated September 6, 1974, Mr. Bader, and one dated September 7, 1974, and I ask you whether you received the copies of those (handing).

A I certainly did.

MR. ENO: May I have these marked as one exhibit, please?

(Defendants' Exhibit K was marked for identification.)

THE COURT: Just so I understand the sequence of one thing here, when you went to St. Louis on the night of the 5th --

THE WITNESS: I didn't go to St. Louis on the night of the 5th, sir.

THE COURT: Well, when you left the airport and went to Scarsdale and left the next day, you didn't know that any carbon copies of anything had been mailed out?

THE WITNESS: That's correct, sir.

THE COURT: You did not learn that until when?

THE WITNESS: I learned it -- well, I actually knew that that had happened on the evening of September 10.

sir, when I came back to my office and I saw Mr. Eno's correspondence and I found an envelope missing, and obviously at that point it would have had to have been mailed out because he wrote detailed objections to eight interrogatory answers. And I knew at that time that while Randolph's had come in, Fagan's and Michael's had not. And since Mr. Eno had given me details as to why the Fagan and Michael answers were insufficient, it was obvious that he must have gotten copies somehow.

THE COURT: To what did you have reference on the 9th when you say, he will be sending copies of the original answers?

THE WITNESS: Well, as far as I knew at that time, your Honor, I knew that the answers had come in, I didn't know what had come in. Mr. Sands told me the answers had come in on the 5th. I didn't mail anything, so of course I didn't know that anything had been received or sent to Mr. Eno.

Now, when a letter came in from Mr. Eno I sssumed that what he must have been asking about is copies of the interrogatory answers of Fagan, Michael and Randolph, which, of course, I hadn't sent to him. So I called him immediately and I told him, please be patient with me, I have been out of the office and I will send those just as

soon as I get back.

At that time I thought they'd been received and lying on my desk, and I thought the copies were lying on my desk. Of course later on I found out to the contrary.

THE COURT: If we assume that you are speaking of the copies that you were aware on the 9th that you were at that point four days late in service --

THE WITNESS: Yes, sir. Absolutely.

THE COURT: Now, your message, telephone message of the 9th which is marked Exhibit H for identification says that you will send -- and I am leaving out the word "photos" which you don't recall, "I will send copies of the original interrogatory answers within the next two days."

THE WITNESS: Yes, sir.

THE COURT: Was that the intended service on your part of the answers in response to the Court's direction to you in August?

THE WITNESS: Yes, sir. No question about that. The service that was served --

THE COURT: Just let me ask you:

Since you were aware you were late, wasn't it appropriate for you to have served those copies immediately, assuming that's what was referred to in the telephone

BEST COPY AVAILABLE

message, Exhibit H?

THE WITNESS: Now, I'm sorry, your Honor, I am confused. Please bear with me.

THE COURT: Well, I am trying to ascertain what this instrument refers to. I'm saying if this refers to your service of the copies --

THE WITNESS: Of Randolph, Fagan -- there are two different copies involved, your Honor. There's one --

THE COURT: Hold on. If this was to be service of the answers, then on the 9th the service of the answers was late.

THE WITNESS: Yes, sir, absolutely.

THE COURT: And you were aware it was late.

THE WITNESS: Absolutely.

THE COURT: And notwithstanding your awareness it was late, you were apparently in no hurry to serve it because your message says that you will serve them within the next two days.

THE WITNESS: Yes, sir. That is absolutely correct.

THE COURT: Did that cause you any concern as to a motion to dismiss for lack of timely service or anything of that --

THE WITNESS: Well, I must admit, your Honor,

looking at the whole situation in retrospect there is no question that I was negligent at that point. What I should have done, obviously, when I didn't get the answers on the 5th when I left the office, before I left the office I should have made a motion for an extension of time. That's what I should have done. But, I didn't do it.

THE COURT. I'm just trying to find out what this message refers to.

THE WITNESS: I didn't do it.

THE COURT: I take it you say this message does not mean that you had the originals in your possession on the 9th, and you were merely going to give him photocopies of those originals so that Mr. Eno would be assured that there were in fact originals in existence.

THE WITNESS: No, no, sir.

THE COURT: That's not what that message means.

THE WITNESS: That's not what that means, sir.

THE COURT: I see.

THE WITNESS: I didn't know -- I knew, of course, that he had the originals of the Independent Investor Protective League interrogatories. Those, of course, had already been duly served. I knew those went out. But I thought that -- I hadn't seen his letter, and I thought that what he meant was that when the letter had

been written that he hadn't gotten copies of the other three.

THE COURT: Well, what I find a little puzzling is that having had Mr. Sands come back to look and see if certain materials came in the mail at 3.30 on the 5th, and that being the last day for service in compliance with the Court's order which had been very firm, as I recall it, in establishing this time limitation, on the 9th you apparently had no concern whatever about the time. Rather blithely saying that the answers would be served, the interrogatory answers would be served, quote, within the next few days.

THE WITNESS: Yes, sir. I must admit, your Honor, that I do take an approach, perhaps it's wrong, I know that normally when I get involved in situations like this I have normally had very little trouble in stipulating with the attorneys for the other side with respect to this, and there is no question whatsoever, your Honor, that the copies of these interrogatories were actually -- Randolph's copies were actually served on the 10th, that is full and complete copies, as set forth in the affidavit of service that is annexed to the answers. And if the original service is no good and is a nullity, then, of course, the Randolph service of the copies would be late anyway.

THE COURT: Now, the words in Exhibit H, the telephone message of the 9th, "Received your letter about Teleprompter case," you say that you were aware that there was a letter in an envelope that was as yet unopened --

THE WITNESS: Yes, sir.

THE COURT: (Continuing) From Mr. Eno, but you were not aware of anything further?

THE WITNESS: Yes, sir.

THE COURT: I see.

All right, go ahead.

BY MR. ENO:

Q Mr. Bader, you had asked Mr. Sands to go to your office to see what mail had come in?

A Yes, sir.

Q Didn't you ask him to open your mail?

A No, sir.

Q And when he told you there was a letter from me you didn't ask him to open it?

A No, sir. Perhaps I should have, but, I didn't.

Q Why didn't you?

A I just didn't. I was rushed to death. I was making myriads of Phone calls. I just wanted to know if there was anything urgent. I didn't think that a letter from you would have been something that was urgent, and I

just didn't ask him to open it. That's all I can tell you.

Q You spoke to me on September 10; is that correct?

A I spoke to your office.

Did I speak to you also, Mr. Eno?

Q Yes.

A I just don't recall.

Q You don't recall your conversation with me on September 10th when your secretary told you that you had better get in touch with me, and you say you called me from the offices of White & Case? Do you remember that?

A I say I may have spoken to you, Mr. Eno. I don't recall the conversation.

Q You don't recall the conversation?

A No, sir.

Q At all? You have no recollection of that conversation?

A No, sir.

Q Absolutely none?

A I'm sorry, if I had known that I would tell you. I don't know whether I spoke to you --

Q Did you read my affidavits in which I set forth

what the conversation was?

A I read your affidavits, sir, yes.

Q Did that refresh your recollection as to the conversation?

A If you will show me the affidavit it may refresh my recollection at this point.

Q Well, let's see if I can.

MR. ENO: Will your Honor bear with me for just a moment?

THE COUFT: Yes.

Q Mr. Bader, I show you an affidavit of mine dated September 16, 1974, and I direct your attention to pages 4 to 5 (handing).

Down here (indicating).

Would you read from there on?

A I wanted all the original answers. Yes, sir, I read that.

THE COURT: Paragraphs what?

THE WITNESS: That refreshed my recollection, your Honor. Now that Mr. Eno brings it to my attention.

Could you leave this in front of me for just a minute?

Q Surely.

A Thank you, sir.

Q Now, will you tell me what our conversation was?

A Yes. You said that you wanted to inspect the original interrogatory answers. I thought at that point that I had all --

Q Woulo you just tell me what was said? What I said to you and what you said to me.

THE COURT: Mr. Bader, what are you looking at?

THE WITNESS: Mr. Eno is basically correct, your Honor.

Your Honor, paragraph -- the last paragraph of page 4 of the affidavit, what Mr. Eno says in his affidavit, sir, is basically correct. I don't know about the time frame, Mr. Eno, but I will take your word for it.

Q I don't want you to take my word for anything. I would like you to testify as to your best recollection?

A Oh, but I don't recall your conversation, Mr. Eno, and now you are trying to refresh my recollection.

Q That's right. And would you read what is in the affidavit?

A I know now from what you say in your affidavit that I did speak to you. And I do recall that you said something about inspecting the original answers. And I told you that I could not agree because I was involved at that time in a deposition at the offices of White & Case.

And you said that you could inspect them later in the day after the depositions were concluded.

I do not recall saying to you that I did not know whether the originals were in my office and I might have left them at home, I don't recall saying that, Mr. Eno.

Q You don't deny you said it?

A I just don't recall.

Q But you don't deny you said it?

A It doesn't seem to me -- it doesn't seem to me that I could have said something like that to you. It just doesn't seem right somehow.

Q Did you say to me in that conversation, when I said I wanted to see all the originals, did you say to me, "I have them and you can take my word for it"?

A I think I said I was told I have them, or something of that kind, you can take my word for it.

Q Did you say "I was told"?

A "I was told"? I may have said that.

Q No, no. Did you say to me, "I have them and you can take my word for it"?

A I don't recall. I don't think I said that.

Q You don't think so?

A No, sir.

Q Did I answer you by saying I didn't want to take your word for it, I wanted to see them? Does that refresh your recollection at all?

A I believe you said something like that, yes, sir.

Q And did you --

A And I said I couldn't do it that day because I was tied up in depositions, it was late and I couldn't get back to the office, I didn't know where the originals were, I hadn't been in the office for several days, but if you came in bright and early the next morning I would be very happy to show them to you.

Q Is that what you said?

A Something of that sort, yes, sir.

Q Did you tell me that when I said I would be up to your office after your deposition that afternoon, did you say to me, "I don't know whether they are in the office, and I may have left them at home"? Did you say that?

A I think I said, "I don't know where they are in the office," I hadn't been in the office for days, but I don't think I said that I had left them at home. No, sir.

Q You don't think so?

A No, sir.

Q And then I said that we would be up there the first thing the following morning to see them; is that

correct?

A That's right, and I said, "Fine, I will meet you there."

And I did meet you the following morning if you recall. I met you with your associate, Mr. Nevling.

Q When did you first learn that these unconformed copies had been mailed?

A Let's see. I had a conversation with Mr. Sands — no, no. I learned it on the 10th, obviously in the evening when I came back to the office.

Q That's the first time you knew it?

A First time I knew about it. I didn't know at that point who had mailed them. That I learned later.

Q When did you find out who had mailed them?

A When I spoke to Mr. Sands, I believe the following Sunday.

Q You came back to your office on the 10th; is that correct?

A No, sir.

Q In the evening of the 10th?

A No, sir.

Q Didn't you go back to your office the evening of the 10th?

A No, sir.

Q When did you go back to your office?

A No, no, wait a minute. Wait a minute. You are beginning to confuse me greatly, and i don't want to be confused --

Q You have confused me for an hour, so go ahead.

A I went back to my office on the 10th after the depositions were concluded. I knew you were coming in the following morning in order to inspect the original answers, so I went ahead and looked at the file and I discovered several things. First I discovered your letter --

Q Which letter?

A I discovered your letter of the 9th, I discovered your letter of the 6th and I discovered your letter of the 7th.

Q Had they been opened?

A I opened them.

Q None of them had been opened?

A No, sir.

Q Go ahead.

A Now obviously when I read those letter I knew very well that you had gotten copies of those answers somehow and you had gotten unconformed copies. And I also found in the file copies addressed to the other

attorneys in this case which had not been mailed. So I knew obviously thqt someone had mailed that letter.

Now, at this point I didn't know who, I knew I didn't. It could have been my secretary, it could have been Mr. Sands, it could have been the secretary of my associate, Mr. Scher, it could have been Mr. Scher himself, it could have been a number of people who did this. At this point I didn't know. All I know is, they went out and they shouldn't have gone out, and that's all I knew on the 10th.

My secretary was gone. I didn't have a chance to talk to her or do any investigations at that time.

Q When did your secretary come into the office?

A On the 11th, at 10.30, but I didn't see her.

Q You didn't see her then either?

A No, sir.

Q When did you next see your secretary?

A On the 12th at 10.30.

Q Did you have a conversation with her about this?

A I sure did.

Q You did.

A I had a conversation with her.

Q What was your conversation?

A I sure did have a conversation with her.

THE COURT: On the evening, you knew on the evening of the 10th the copies had gone out?

THE WITNESS: No, I'm sorry, sir -- I returned to my office on the 10th, sir.

THE COURT: And you got Mr. Eno's letters?

THE WITNESS: Yes, sir.

THE COURT: And at that point you knew that the carbons had gone out as to which you had no originals?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: And I didn't know who did this at this point.

THE COURT: Now, when did you talk to your secretary?

THE WITNESS: On the 12th, sir. I was busy on the 11th. I had to be before Magistrate Goettel at 11 o'clock, then from there my deposition was taken at Cravath, Swaine & Moore in the afternoon.

THE COURT: But you were aware, were you not, on the evening of the 10th that some contention was being raised that you had sent Mr. Eno copies of interrogatories as to which there in fact were no originals?

THE WITNESS: Yes, sir, I certainly did.

THE COURT: Did that cause you great concern?

THE WITNESS: Very great concern.

THE COURT: Do you have your secretary's phone number?

THE WITNESS: No, sir. No, sir. She has been very, very retiscent that way. This is a rather peculiar woman. She doesn't like to be called after hours. She likes to work during her hours that she's got, and after that you can't get hold of her.

THE COURT: There is no way to reach her?

THE WITNESS: No, sir.

THE COURT: Do you have an address for her?

THE WITNESS: No, sir.

THE COURT: Could you send her a telegram?

THE WITNESS: No, sir. But I spoke to her on the 12th, I assure you I did.

THE COURT: All right, go ahead.

Nowhere in your office I take it is there a telephone number or an address for her?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. ENO:

Q When you had left these unconformed copies when you left the office on September 5th, you say there was an envelope attached somewhere?

A They were in an envelope, sir.

Q They were in an envelope?

A Yes, sir.

Q Were copies of those in envelopes addressed to the other attorneys?

A I believe they were, yes, sir.

Q Did Mr. Sands ever explain to you how come he just mailed the one to your office and didn't mail the others to the other attorneys?

A I wonder if we couldn't leave that for Mr. Sands.

Q No, I'm asking you, did he ever tell you?

A Yes, he did.

Q What did he say?

A He said, that was the firm you were worried about and, therefore, I thought those were the ones I ought to get out. But this is subsequent, I mean, I'm not now talking about the 11th. This is after the conversations with many other people as to the circumstances involved. I'm not talking about what I knew on the 11th.

When I wrote the letter to your Honor on the 11th I didn't know a lot of these facts.

THE COURT: Mr. Bader, do you withhold taxes from your secretary?

THE WITNESS: Yes, sir.

THE COURT: Do you have an address for her on the withholding statements?

THE WITNESS: No, sir. They don't require that. They just require a Social Security number.

THE COURT: Did she work on the 11th?

THE WITNESS: Yes, sir, but I didn't see her.

THE COURT: Did you leave word, did you call into the office?

THE WITNESS: I sure did call into the office on the 11th, and I said, I have got to see you tom orrow. You got me in one hell of a lot of hot water.

THE COURT: All right.

BY MR. ENO:

Q What is your secretary's name?

A Dorothy Blacker.

Q I show you this letter dated September 11 and I point out to you that the secretary's initials are "CF."

Who is CF?

A Me.

Q You mean you typed that letter yourself; is that correct

A Yes, sir. That's my code. When I type a letter myself, unfortunately I don't have the secretarial service that I should have, and I have to do a lot of my

own typing, and when I do I put "CF" on that.

Q So your secretary was in the office when you or yourself typed that letter?

A Not at the time I typed the letter, she wasn't in the office. I typed that letter on the evening of September 11, sir.

Q Are you sure?

A Yes, sir.

Q What type in the evening?

A Probably it was quite late. It was probably after I came back from Cravath, Swaine & Moore.

Q Doesn't Mrs. Blacker work for somebody else in that office?

A No, sir.

Q Just for you?

A Yes, sir.

THE COURT: What about "FG"? Who is FG?

THE WITNESS: "FG" is another code I use, your Honor. Those initials, I use various initials depending on what I'm typing. I don't like to use the same initials all the time, but I can tell your Honor that that is something I personally typed.

THE COURT: I see.

Q Could you explain in view of your testimony these

statements in an affidavit of my associate, James K. Nevling, Jr., Esq. of September 16, 1974 when he served in your office an order to show cause in this matter signed by Judge Owen:

"When I arrived at those offices at about 2.50 p.m. the only person present in the outer room of said offices was Miss Dorothy Blacker who informed me that she would not accept or acknowledge service of the order to show cause.

"She denied that she had any connection with the firm of Bader & Bader, or with I. Walton Bader, Esq., the only member of the firm who has been involved in this action to my knowledge, and denied that she was authorized to accept service of process in their behalf."

Can you explain those statements?

A Yes. I can explain it quite easily. You went to the wrong woman and you thought Dorothy Blacker was a woman who was not Dorothy Blacker.

Q This person identified herself to Mr. Nevling as Dorothy Blacker.

A Impossible, because she doesn't work in the front office, she works in the back office. It would be impossible, Mr. Eno. There is a girl who works in the

front office, but she isn't my secretary.

Q When you got to your office did you see the answers of Mr. Randolph?

A You mean on the 10th?

Q Yes.

A Sure.

Q What condition were they in?

A They had been opened and laid on my desk.

Q Where was the envelope?

A It wasn't there.

Q Do you know what happened to the envelope?

A I do not. Well, I know now Mr. Sands told me.

Q What happened?

A He threw it out. I didn't know then.

Q So you never saw the envelope in which they came?

A No, sir.

MR. ENO: May I have just a moment, your Honor?

THE COURT: You may.

THE WITNESS: Parenthetically, your Honor, if I may make a statement at this point, Mrs. Blacker has instructions to open all papers that are served and to admit service of any paper which is served upon me during her normal working hours, and those are specific instruc-

tions, and I believe the firm of Cravath, Swaine & Moore, White & Case, I'm just giving you some names, Shea, Gould, Climenko & Kramer, there are a number of firms of that sort with whom I have had business who have served papers on Mrs. Blacker and have gotten admissions and had even gotten stipulations signed without any difficulty whatsoever.

Q Mr. Bader, do you recall that you were before Judge Owen in this matter on September 20th, 1974 on the argument of a motion?

A I presume I was if you tell me so.

Q Did you make the following statements to Judge Owen on that argument --

A September 20th?

Q On September 20th, 1974.

Did you tell Judge Owen that you had left your office on September 5th at about 3 p.m.; did you tell him that at the time you left Mr. Sands was with you at the time; did you tell Judge Owen that you then told Mr. Sands that if the answers of the other plaintiffs came in he should mail out the copies?

Did you make those statements on that argument to Judge Owen?

A I don't recall making such statements. And if I did, they are incorrect.

THE COURT: Mr. Bader, I have a note in the minutes of that day:

"If answers come in I want (you) to send answers out."

THE WITNESS: That's correct, sir. That's correct, sir. That statement that your Ho nor has made --

THE COURT: You told Mr. Sands to do that?

THE WITNESS: That answers come in to send them out?

THE COURT: Yes. Answers come in, want you to send answers out.

THE WITNESS: I don't recall saying that, your Honor, but your notes -- all I can tell you, sir, is that that is incorrect, that I did not give Sands such instructions. That's all I can tell your Honor. I mean, all I can tell you is that there has been a mistake made.

BY MR. ENO:

Q And after you made this statement to judge Owen didn't Judge Owen point out to you that that was not in conformity with Mr. Sands" affidavit where Mr. Sands had merely said that he assumed that he could send the answers out when he had received Mr. Randolph's answer?

A All I can you tell you is, sir, that I have been very upset about this entire situation, as you can under-

stand, and if I made such a statement to Judge Owen, then all I can tell you is that that statement is absolutely incorrect. And since I am under oath at this point, I have to tell the truth.

MR. ENO: I have no further questions at this particular time, your Honor.

THE WITNESS: Your Honor, could I give a statement in narrative --

THE COURT: You certainly may.

THE WITNESS: Thank you, sir.

I would like to introduce a letter which I have in my file from the Post Office Department. Your Honor has the original that I have given to you.

THE COURT: Why don't we use that.

THE WITNESS: Yes, but I want to give you my letter, I got the original letter back from the Post Office. I went to see the gentleman at the Post Office and got the original, because I think that's important to bring to the Court's attention (handing).

Could we have that marked?

THE COURT: Yes.

(Plaintiffs' Exhibit 1 was marked for identification.)

THE COURT: All right.

THE WITNESS: And I also would like to submit a service standard notification that I received from the gentleman who had answered my letter, your Honor, which indicates that normal service standards would be a two-day delivery from California to New York.

May we have that marked?

MR. ENO: May I see that, your Honor?

THE COURT: You may (handing).

(Plaintiffs' Exhibits 1-A and 2 were marked for identification.)

THE WITNESS: Other than that, your Honor, I have nothing else.

THE COURT: All right, thank you very much.

You may step down.

THE WITNESS: Thank you, sir.

THE COURT: Unless you have some redirect examination based on that, Mr. Eno.

MR. ENO: No, your Honor.

(Witness excused.)

MR. ENO: I would like to call Mr. Sands.

THE COURT: All right.

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M E R R I L L S A N D S , called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q What is your address, Mr. Sands?

A Pritton Hill Road, Brookfield Center, Connecticut.

Q Do you have any other address?

A No, I do not.

Q What is your occupation?

A Real estate broker.

Q Do you work for anyone?

A My own firm.

Q What is your style?

A Stir Realty, which I am a principal of.

Q Who else is associated in that business with you?

A I have a partner, Nicholas Marando, of New Milford, Connecticut.

Q Do you have any employees in the office?

A Only associates.

Q How many associates?

A Two others.

Q What are their names?

A One is -- well, let's see, his name is Tew, is

his last name, and -- well, there is only one other at the present time. The other one left about a couple of weeks ago.

Q How many hours a day do you spend at your business usually?

A At the office itself, you mean?

Q Yes.

A Not very many. Couple of hours a day at the office itself.

Q Then are you occupied in your business the rest of the day?

A Usually going around the area. I still do maintain another business, the Eastern Fur Products Company, Incorporated, which I am vice-president and treasurer of.

Q Where is that located?

A Danbury, Connecticut.

Q Danbury.

A That's the adjoining town.

Q Do you keep diaries?

A No.

Q You have no recordo of your whereabouts on any particular day?

A No, I have never kept diaries.

Q Do you have a secretary?

A No, secretary.

Q Either in the Danbury place of business or in the Brookfield place of business?

A No, the Danbury one is virtually a shell corporation now because the properties were taken over by the redevelopment agency.

Q What is the address of the Danbury --

A Only a Post Office box, 829, Danbury, Connecticut.

Q You have no offices at all?

A No. I do have places where material are kept, properties that we own, but there is no employees or anything like that since -- for about a year now.

Q How long have you been with the League?

A Three years I'd say.

Q You direct its litigation?

A I'm secretary of it, I wouldn't say I direct it, no. Gordon, Richard Gordon I'd say is really -- he is president, he's really in charge.

Q I show you an affidavit which has been marked as Exhibit G, and I ask you whether you executed the affidavit (handing).

A That's my signature.

Q That is your signature?

A That's right.

cme

Q And in that affidavit did you make the following statement;

"I am controlling the strategy of this litigation and my attorneys are carrying out my instructions."?

A On this particular one, yes.

Q On this particular one?

A On this particular one, yes.

Q Why this particular one particularly?

A Because Randolph was a friend of mine.

Q When did you first meet Mr. Randollph?

A Oh, his father is a physician in Danbury, and I have known him quite a length of time. Met him down stock offices and that.

Q Where did you execute this affidavit, Exhibit G?

A I think this is the one I -- what's the date on this one? I don't remember where this particular one was.

Q You have no recollection at all?

A Wait a minute. This is the 17th of September? That's -- I believe we met at the A & P on Route 684, it's off 684. I think he said 687, it's 684 in Golden's Bridge.

Q Did you read it before you signed it?

A Yes, I did. It was in the evening and it was

in the car and we used the light in the car, but I did read it.

Q Is it true?

A Yes, it was.

Q Where were you on September 5th, 1974?

A Well, I came to New York that day.

Q What time did you leave your home that morning?

A Back when I had the factory, I'm a guy gets up 5.30, 6 o'clock every day, I always did for years when I had a factory, and I just don't get out of the habit. The factory's been gone a year and a half now, and I still get up at 5.30, 6 in the morning.

Q When did you leave your home to come to New York that day?

A I'd say about 6.30, quarter to seven.

Q How did you travel to New York?

A I drive down to North White Plains usually, leave the car there and then take the train in.

Q What train did you take on September 5th?

A That as the seven -- they leave I think at 7.50 -- I think it's 26 after the hour and 20 of the hour. They leave -- it was the one just before 8 o'clock there, twenty of eight or something like that.

Q Where did you go when you came to New York?

A Grand Central.

Q Where did you go from Grand Central?

A From there I went and I went to a little restaurant there and had some coffee and Danish.

Q Then where did you go?

A To Mr. Bader's office.

Q Did you have an appointment with Mr. Bader?

A Yes, I did.

Q When did you make that appointment?

A A couple of days before he had spoken to me and he had said that he had some papers that had to be signed definitely by that Thursday, I believe it was a Thursday, the 5th, and could I meet him.

Well, one night I couldn't meet him, I think it was Tuesday, there was a planning or zoning meeting up my way, and one night he couldn't meet, and I said, look, I have to go into New York on Thursday anyway, so I went to his ofice in the morning.

Q And you arrived there at what time?

A I'd say it was 8.30.

Q Was he there then?

A Yes, he was.

Q Will you tell me what transpired?

A Well, we talked a little bit about Teleprompter

and he said he had to have these -- gave me the papers to sign on behalf of the League, which I did.

We spoke a little while and he was quite disturbed. He said he was busy as the devil and planning on going away, I think he said to St. Louis that afternoon or evening, and he was pretty much in a hassle. He had to get the papers out and so, well, after I signed these we put the ones I signed into a large manila envelope, and there were a couple of other manila envelopes there that he had there that he sealed up at the same time. Put them in three or four large manila envelopes, and we stamped them, and I held them there and he had at that time an open envelope on his desk, and it had, he showed me, he said, these are the -- I believe he said, copies of interrogatories on the Teleprompter, and he had them in the envelope there and he had a stamp on it. I remember that, but it wasn't sealed.

He said, these have to go out today, but they can't go out until the answers arrive. And he was going to wait around for a while, and he said, look, where are you going to be today? And I said, well, I'm going down to the fur district down on 27th Street -- that's still from the fur days, I go down that way, look around once in a while. And I said, well, I am going to be here all

day anyway, and besides I was looking for a mortgage for a shopping center, I wanted to see if any of the banks around -- our banks have been pretty tight on mortgages, and it's a large mortgage for A & P in New Milford, and I thought maybe some of the banks or insurance companies or mortgage brokers might be helpful around here. I found they weren't.

But, I said I would be in town most of the day.

And he said, well, this is a little later on, I'd say it was after nine at that point, he said, look, you could do me a favor. If you are going to be in town all day could you drop by at the office at around 4 o'clock or so and I will give you a call back and you can let me know if the answers on these Teleprompter things show up.

I said, fine, no problem at all. I will come back to your office. And he said, well, I will call you up. He's got two telephones there, and one of them is the 61, and that one only rings, no answering service or answering machine or anything, secretary doesn't answer that one.

He said, I'll call you on the 61 line and that way you can pick up the telephone and you will know its me.

I said, fine.

So I left the office, I took these manila -- I don't see anything as big -- they were big manila envelopes,

and I mailed them on my way out. That was in the morning of the 5th.

Q What time did you leave the office?

A I'd say it was before 9.30.

Q Were there any other envelopes there that were on Mr. Bader's desk?

A With due respect to Mr. Bader's desk, have you ever seen it?

Q Just answer my question?

A Well, the desk is a little cluttered, putting it midly. The desk is kind of covered. You don't see much desk.

Q So you didn't see any --

A There were a lot of envelopes, a lot of legal folders and that all over the desk.

Q Where did you go when you left his office?

A I went down to 27th Street.

Q With whom did you meet on 27th Street?

A Didn't meet. I went to see a fellow by the name of Sol Sturman, and he wasn't there. I stopped by a place called Shad by-products and they weren't there. Went, stopped in the stock office somewhere there, brokerage house, just to look and watch the ticker for a while.

Then it got being noontime and I ate. Basically

that's down in the fur district there. I just wandered through the -- like down near skins trading, like 27th, 38th, 29th, 30th Street.

Q What time did You get back to Mr. Bader's office?

A I came back up that way about a quarter of four I'd say it was.

Q Did you meet anybody between the time you left the office and the time you came back?

A Did I meet anyone?

Q Yes, did you have any appointments to meet anybody in New York?

A No, no appointments to meet anybody.

Q Did you meet anybody?

A I went -- I made a lot of phone calls.

Q I didn't ask you that.

A I went into a phone booth -- well, I'll tell you what I did, I went down and I called about five different banks asking about mortgages, I stopped in, I called a place, some mortgage brokers, I called up also to find out if I could arrange for this mortgage.

Q Did you meet anybody face-to-face?

A A person that I knew you mean?

Q Yes.

A No one really.

Q Can you give us the name of anybody you met face-to-face?

A No. Of a person that I met?

Q Yes. Face-to-face. In New York that day?

A An individual?

Q Yes.

A I can't tell you his last name. I could tell you it was Sturman, Sol Sturman.

Q Where is he located?

A 27th Street.

Q Who is he?

A He has a fur business.

Q What was your occasion to see him?

A Oh, I had sold him earlier in the year quite a bit of rabbit skin waste, and I was looking for muskrat hair.

Q How long a time did you spend with him?

A Maybe an hour.

Q When you left the office of Mr. Bader his secretary hadn't come in, had she?

A No.

Q And when you came back to his office his secretary had already left, hadn't she?

A There wasn't anyone there, no.

Q So nobody saw you in Mr. Bader's office except Mr. Bader; is that correct?

A No, I believe when I went by the office the associate there I think saw me. I'm pretty sure I saw him sitting at the desk, Mr. Scher.

Q He is Mr. Bader's associate?

A Well, he has the same office, I should say.

Q He is not associated with Mr. Bader?

A Not, not associate, that's incorrect.

Q But Mr. Bader's secretary didn't see you at all that day?

A No, sir.

Q You did not see her?

A No, I did not see her.

Q When you came back to the office what did you find?

A Well, when I come into the office where his mail is there's a -- it says on the wall, it says, "Bader & Bader and the mail is in like a stack there, it gets put on a stack, and there were a couple of envelopes there, including one of whom was from California from Randolph --

Q Will you describe this? When you come in Mr. Bader's office what do you see there?

A The first thing you see?

Q Yes.

A That would be a, I guess it's a desk or a table.

Q There are two desks there, aren't there?

A Not when you first walk in.

Q Are you sure? Isn't there a desk on the right side and a desk on the left side when you come In the office?

A You walk in there's a desk right there, there's a wall there, and I think there's a file cabinet on the right.

Q Don't you come into a space where there are desks for two women?

A No, beyond the cabinet, beyond this table there's a desk, but not when you first --

Q In the outer room I'm talking about?

A The outer room when you first walk in there's like a table.

Q Is that where the letter was?

A On the right-hand side, yes.

Q It was just resting there?

A Well, there was mail with it.

Q Did you go through all the mail?

A Just the stuff on top, saw the letter from California which is the one --

Q Right on the top?

A No, it wasn't. I went through so it couldn't have been on top.

Q What kind of an envelope did it come in?

A I really -- I think it was a regular envelop. I didn't associate any importance to the envelope except the name on it.

Q Did you open the letter? Did you open the envelope?

A Yes, sir. Not there. Not there. I went into Mr. Bader's office to wait for his phone call.

Q You carried it in?

A I carried -- wait a minute, no. Yes, I carried it in.

Q Unopened?

A That's right.

Q Then what happened?

A Well, I ripped it open in his office there and saw Randolph's name was on the thing, and then I waited for his phone call on the 61 line.

Q What did you do with the envelope in which the interrogatories --

A There was a basket there, I just threw the envelope aside and put the interrogatories right there on

his desk.

Q Then what happened?

A I got a telephone call on 61, he called in at four, quarter after four, some time a little after four it was. And I said, you don't have to worry, the Teleprompt answers are here.

He said fine, good.

I said, go, have a good trip now.

He said, good. That's it. Hung up.

Q You say you were directing strategy in this case; is that correct?

A When you say strategry, you mean --

Q No, you said strategy, I didn't.

A Well, part of it, yes. I'd say that.

Q You knew that more than Randolph's answers were due, didn't you?

A No, I was on Randolph --

Q No, I'm ask you now, you knew that there were answers due not only from Randolph but from Fagan and Michael?

A I never even knew who this Michael was, really.

Q Well, you are directing the strategy in this lawsuit, you said, in your sworn affidavit. I will read it to you:

"I am controlling the strategy of this litigation and my attorneys are carrying out my instructions."

Isn't that what you said?

A Well, that doesn't mean that -- I don't do the legal part of it, when you say strategy. It has to do with the basics of it, not the technical --

Q Well, didn't you know at that time, and didn't Mr. Barter tell you that he was required to serve answers by Fagan and Michael?

A No, he said he needed the answers for the Teleprompter case that day.

Q And he didn't tell you what answers?

A No, he just said the answers.

Q He didn't say anything else?

A That's all he said.

Q Now, will you go on with your story as to what happened?

A Well, after I spoke to him I took the envelope that was there, I said, boy, good thing you came in, sealed it, put it in -- went out the door, sealed it, put it in the mail chute out there.

Q In the mail chute?

A That's right.

Q What time did you put it in the mail chute?

A Twenty after four, maybe it was. Some time around there.

Q Did you see that when you mailed them you were mailing unconformed copies of answers other than Mr. Randolph's?

A I didn't open the envelope. I just sealed it and mailed it.

Q So you didn't know what was in the envelope when you mailed it?

A Well, in the morning he said those are the things that have to go out.

Q And he didn't tell you to mail them?

A No, he didn't tell me to mail them.

Q What induced you to mail them?

A Because that's one of the reasons I went to his office in the morning was to sign so that my thing should be mailed out so I figured those had to go out.

Q You had him on the telephone, he was on the telephone?

A Right.

Q Important matter. You didn't say to him, "Should I mail them out?"

A No, I didn't.

Q You didn't. And he didn't say to you, "Mail them out"?

A He didn't tell me to mail them.

Q Did you notice the stamp, the postmark on the letter from Randolph?

A No, I did not.

Q You didn't. So you don't know when he mailed his letter?

A No, I don't.

Q Having mailed them did you let Mr. Bader know that you had mailed them?

A Well, let's see, this was on Thursday, I didn't get to see him until Sunday.

Q Did you tell him before that that you had mailed them?

A Tell him what?

Q That you had mailed them?

A I didn't see him until Sunday.

Q But did you before that tell him that you had mailed them?

A Before Sunday?

Q Yes.

A I hadn't seen him, how could I tell him?

Q You could tell him on the phone?

A I hadn't spoken to him between Thursday and Sunday.

Q You didn't leave a note?

A Didn't leave anything.

Q Didn't you think that he might be looking for these things and wondering where they were when you had put them in the mail?

A Not really. I saw the envelope with the stamp and I really thought he meant for them to go out.

Q When did you speak to either Mr. Bader or his secretary about mailing them?

A About mailing them?

Q Yes. About the fact that you had mailed them?

A Oh, this happened, well, if this was Thursday, it would be that Sunday, a week after that, the following Sunday.

Q He didn't try to get hold of you to try to find out what happened?

A No, we spoke during the week and he told me, oh, I think it was on a Thursday or a Wednesday of the following week, that he was having a -- I think it was Thursday -- he said, boy, was he having big problems on Teleprompter. He said they are breaking his back on it.

I said, well, you know, fight it out.

cms

Q Did he tell you what was wrong?

A Not until Sunday, really.

Q What did he tell you on Sunday?

THE COURT: Sunday the what?

THE WITNESS: That would be --

THE COURT: The 15th?

THE WITNESS: Yes, that would be the 15th. If it was the -- yes -- no, would that be the 15th, a Sunday, or --

MR. BADER: I think the 15th would be a Sunday.

THE WITNESS: 15th would be a Sunday, that's right.

A (Continuing) That day I spoke to him and he

10 told me, he says, boy, I'm having a hot time on the Teleprompter answers, he says, they are breaking my back.

I said, what happened?

He says, well, he says, I have had it out with my secretary, I told her she must have mailed those answers without telling me and she denies it.

I said, I told him, I said, I mailed them, and there was a little discussion between us at that time.

Q Did you speak to Mr. Bader at any time between the 5th and the 15th?

A Yes, I did.

Q When did you speak to him?

A I'd say that on the -- either the 13th or the 12th, 13th, 14th, could be either one of those days.

Q What was the subject of that conversation?

A Well, we had a couple of other things going on.

Q I mean about this case?

A We were talking about othe things, and on this every time when I spoke to him on Teleprompter he said, boy, he's having a terrible time on it.

Q Now, as I understand your testimony when Mr. Bader left on the 5th he knew you were coming back into the office to see whether the answers had arrived; is that right?

A That's right.

Q And that he learned some time subsequently that the unconformed copies had gone out; is that correct?

A Well, he -- you mean before he asked me?

Q Yes.

A Yes, he must have found out.

Q And he spoke to you some time before the 15th: is that right?

A Right.

Q And it wasn't until the 15th that he thought to ask you, were you the one who sent out the copies?

A That was the first time he asked me if I had mailed them, that's right. He said he was having a hot time with the Teleprompter answers, and I didn't really know what the basis of it was.

Q Mr. Bader has put in an affidavit here that there are irreconcilable differences between you and himself about this case; is that correct?

A That's pretty --

Q What are the irreconcilable differences?

A One of them is right here and now, because I feel this is a waste of my time down here, defending him on something which is of no value to me. I have been down here all day long, for example, having to chase down, frankly for nothing, that's the way I feel about it. I'm not an attorney, I'm not trying to tell any attorneys what, but as far as I am concerned this is a wasted day on my part coming down here battling out. It's got nothing to do with going, proceeding with a case, getting anything. At least I don't think it has.

Q It wasn't a waste of your time to spend the whole day of the 5th in New York in order to see whether the answers came in, was it?

A That was to get the case going. That was different.

THE COURT: Let me just be clear on this.

You mailed out this envelope not knowing what was in it?

THE WITNESS: Not till after, that's right.

THE COURT: Not knowing what was in it, not being instructed to mail it out?

THE WITNESS: That's correct.

THE COURT: Is that correct?

THE WITNESS: That's correct.

THE COURT: All right.

THE WITNESS: I shouldn't say -- I knew there were Teleprompter answers in it, but I didn't realize that they had to be signed and -- I thought as long as the answers came in from Randolph that those could go out.

THE COURT: Had you ever gone into a lawyer's office before and taken something off his desk and put it in the mail?

THE WITNESS: I have mailed in the morning those manila envelopes for him.

THE COURT: No, I mean taken it off his desk when he isn't there.

THE WITNESS: Well, this here I felt I was helping.

THE COURT: No, no. Have you ever done it

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before?

THE WITNESS: No, I can't say I have. And I assure you, your Honor, I'm never going to do it again, I can tell you that.

THE COURT: Did anybody ever come into your office and take something off your desk and mail it?

THE WITNESS: Yes, sir.

THE COURT: Without your instructing them to do it?

THE WITNESS: That's right.

THE COURT: Who?

THE WITNESS: It was a check.

THE COURT: Who?

THE WITNESS: It was my partner one day.

THE COURT: Your partner?

THE WITNESS: That's right.

THE COURT: I'm talking about somebody from the outside, some customer of yours. Has any customer ever come in and taken anything off your desk and mailed it?

THE WITNESS: Not that I recall, no.

THE COURT: Go ahead, Mr. Eno.

MR. ENO: I don't think I have any further questions on this, your Honor.

MR. BADER: I have no cross, your Honor.

THE COURT: All right.

Mr. Sands, you may step down.

(Witness excused.)

MR. ENO: I have one witness I would like to call for just one minute.

THE COURT: I will entertain your motion to call Mr. Bader's secretary at a time to be agreed upon. Also in connection with that I think we should have at this point the affidavit that Mr. Bader says she has prepared.

MR. BADER: Yes, sir.

THE COURT: Go ahead.

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H E N R Y T. M E A D E , called as a witness in behalf of defednant, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. ENO:

Q Mr. Meade, would you give us your address, please?

A 765 Cortlandt Avenue, Bronx.

Q Mr. Meade, by whom are you employed?

A U. S. Post Office.

Q What is your position with the U. S. Post Office?

A Foreman, delivery and collection.

Q With what station are you associated?

BEST COPY AVAILABLE

A I am connected with the General Post Office.

THE COURT: Where is the General Post Office? Is this the old Penn Station area?

THE WITNESS: 33rd Street and Eighth Avenue.

THE COURT: All right.

Q Are you here in response to a subpoena that was served upon you or upon the Post Office?

A Upon the Department.

Q Upon the Department?

A Yes, sir.

Q Have you brought with you certain departmental records?

A Yes, sir.

Q Do you have the originals, Mr. Meade?

A Yes, sir.

MR. ENO: Your Honor, I would like to use the copies of these records because Mr. Meade says he needs these.

THE COURT: Surely.

Mr. Bader, you may examine the originals and assure yourself that the copies are true copies, and we will let the gentleman take his originals back with him.

MR. BADER: Yes, sir.

BY MR. ENO:

Q Mr. Meade, I show you a card and ask you what this card is (handing).

A It's a 1260 form.

Q Will you tell us what --

A It's used as a time card. We are on what we call PSDS, Postal Service Data Section. Man has a rate, if it fails to register the carrier uses this card and writes his time in and it's verified by a supervisor.

THE COURT: I fail to follow this, I am sorry.

MR. ENO: Your Honor, if I may just ask a few leading questions.

THE COURT: All right, go ahead.

Q Is this card that you have produced the time record of a particular carrier?

A Yes, sir.

Q Who is the particular carrier?

A LaPorter.

Q Was he assigned the delivery of mail at 274 Madison Avenue?

A He was one of four men on the route. I can't say that specific building.

Q I see. He was one of the men on the route?

A That handles 274 Madison Avenue.

Q Is this the time card of Mr. LaPorter for September 5, 1974?

A Yes, sir.

MR. ENO: I would like to mark a copy of that, if your Honor please.

THE COURT: You may.

MR. BADER: May I see that time card, Mr. Eno, please?

MR. ENO: Here you are (handing).

(Defendants' Exhibit L was marked for identification.)

xx BY MR. ENO:

Q Can you tell me who the names of the other carriers on that route on September 5, 1974 were?

A One is Mr. Krum, Mr. Gilchrist, Mr. Gettings.

Q Do you have a record to show when Mr. Krum, Mr. Gilchrist and Mr. Gettings signed off that day?

A Mr. Krum signed off at 1451, which is Navy time.

Q What is that in --

A 2.31 p.m.

Q 2.31 p.m. That was when he signed out from the Post Office, is that correct?

A Finished for the day, right.

Q When did Mr. Gilchrist sign out from the Post

Office?

A 12.06 p.m.

Q And when did Mr. Gettings sign out that day?

A 2.27 p.m.

Q And when did Mr. LaPorter sign out?

A 2.30.

Q Those were the times when they had already made their deliveries inthe area and had signed off for the day and left for the day; is that correct?

A They were finished for the day, yes, sir.

MR. ENO: Your Honor, I would like to have this heetsmarked that Mr. Meade has testified to.

MR. BADER: I have no objection, your Honor.

THE COURT: I may be recieved.

(Defendants' Exhibit M was marked for identification.)

MR. ENO: I have no further questions.

THE COURT: Let me understand.

Exhibit L marked for identification --

MR. ENO: If your Honor please, Exhibit L marked for identification is the card of Mr. LaPorter, and it develops that he was the last man out that day. There were three other men who made deliveries during the course of September 5th. Their names appear between the lines

on Exhibit M. And Mr. Meade has read into the record their sign-out times. So that it would appear that the last man to sign out who made regular deliveries on September 5th, signed out from the Post Office at 2.30 in the afternoon, and he had completed his delivery by that time.

THE COURT: And Mr. LaPorter here, what does "ET" mean, Mr. Meade?

THE WITNESS: End time.

THE COURT: That is 1450 which is what, 2.50?

THE WITNESS: 2.30, sir. It's a hundred-unit clock.

MR. BADER: It's a 24-unit clock, isn't it?

THE WITNESS: It's a 100-unit clock, 24-hour clock.

THE COURT: So the 1450 means 2.50?

THE WITNESS: 2.30, sir.

THE COURT: Where does the 20 minutes come in?

THE WITNESS: Oh, it's --

THE COURT: I see what you are saying. Of course. Of course. Very good.

THE WITNESS: It's 12.25 --

THE COURT: I understand. I see. And you LaPorter, he is the last man to work that day and he signed

out at 2.30 in the afternoon having completed all his duties and presumably having washed his hands, hung up his bag, changed his uniform --

THE WITNESS: Well, the one above shows where he got all that. He came back to the station at 2.09.

THE COURT: I see. Then he signed out at 2.30.

THE WITNESS: Right.

THE COURT: I understand.

MR. BADER: May I ask a couple of questions?

THE COURT: This should be received in evidence, it is only marked for identification at this point.

(Defendants' Exhibit L was received in evidence.)

CROSS EXAMINATION

BY MR. BADER:

Q I'm a little confused about this matter and I hope you can help me.

Does this record of yours indicate that -- well, what does your record indicate that the last time that a delivery could have been made on September 5th at 274 Madison Avenue would be? The very last time.

A That doesn't indicate what the very last time would be.

Q No, I'm very badly confused now and I hope you can help me. The reason that Mr. Eno wanted this information was that he wanted to know what time -- he is trying to find out what time the last delivery was made at 274 Madison Avenue on the 5th of September. That is what he is trying to find out.

A This indicates the ending times of the carriers for that route.

Q Yes. Well, that would mean therefore that by 2.30 Mr. LaPorter, the last carrier, would have returned to the Post Office?

A Yes, sir.

Q And that would mean that the last delivery that day must have been before 2.30?

A Yes, sir.

Q And how much before?

A I can't say, sir.

Q Would it be five minutes, ten minutes, an hour, two hours, three hours?

A Ten minutes -- no, it's more than -- he come back to the Post Office at 2.07.

Q So that therefore what would be the last possible time that he could have made that delivery in your opinion?

A 1.30, 1.45.

MR. BADER: 1.30, 1.45. Thank you.

No further questions.

THE COURT: Mr. Eno, do you have any further questions?

MR. ENO: No further questions at this time, your Honor.

THE COURT: All right.

Mr. Meade, thank you, sir. You may step down.

(Witness excused.)

THE COURT: Now I think it would be appropriate to have Mrs. Blacker, do you agree?

MR. ENO: I agree with that, your Honor.

MR. BADER: Could we have her on Tuesday, Wednesday and Thursday, your Honor?

THE COURT: Well, Mr. Eno, I think if we can, let us oblige her. What would you say some time later this week or next week?

MR. ENO: Your Honor, I'm out this week.

THE COURT: All right, then we will have it next week.

MR. ENO: The 13th and 14th would be fine for me, your Honor. Either one of those days.

THE COURT: Well, let's make it the 13th at

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4 o'clock. Is that agreeable?

MR. BADER: All right.

THE COURT: Now, Mr. Bader, do we need to serve a subpoena?

MR. BADER: Well, the problem is I hope I can get her. If not I will let Mr. Eno know and I presume he could serve a subpoena, I would arrange for it. You see, that's beyond her time. Of course I will have to pay her extra for it, but that's the problem we have.

THE COURT: Well, I want to assure all of us that she will be here. Now, what does it take to do that?

MR. BADER: Well, I will speak to her tomorrow.

THE COURT: I would be distressed if you were to report to me at 4 o'clock on Wednesday the 13th that she had gone home.

MR. BADER: I wouldn't do that, your Honor. I will check with her tomorrow. She's coming in and I'll check the date and I'll tell her that I certainly would appreciate her being there, and if she isn't there, then I will have to inform Mr. Eno and he will subpoena her. So that --

THE COURT: Well, you will have to inform the Court and I will act appropriately.

MR. BADER: Right, I understand that, your Honor.

THE COURT: All right.

This Court stands in recess until Wednesday, November 13th, at 4 o'clock.

(Time noted: 6.15 p.m.)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., :

Plaintiffs, :

vs. : 73 Civ. 4133 (LFM)

TELEPROMPTER CORP., et al., :

Defendants. :

----------x

Before:

HON. RICHARD OWEN,

District Judge.

New York, November 13, 1974,
4:30 p.m.

APPEARANCES

I. WALTON BADER ESQ.,
Attorney for plaintiffs

ROSENMAN, COLIN, KAYE PETSCHEK, FREUND & EMIL, ESQS.,
Attorneys for defendant Touche, Ross & Co.
BY: LAWRENCE R. ENO, ESQ., and
MARVIN PICKHOLZ, ESQ, of counsel

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MR. BADER: I have Mrs. Blacker, your Honor.

THE COURT: Yes, Mrs. Blacker, thank you for coming.

Mr. Eno, would you like to ask Mrs. Blacker?

MR. ENO: I also have two other short witnesses.

THE COURT: All right.

MR. ENO: Then I'd like, with the Court's permission, to ask Mr. Bader a few other questions.

MR. BADER: All right.

THE COURT: Very good.

MR. ENO: And I'd like to make a statement under oath, your Honor.

D O R O T H Y B L A C K E R, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q What is your address, Mrs. Blacker?

A 9411 Shore Road, Brooklyn, New York.

Q What is your phone number?

A I prefer not to give my phone number. It's just a personal thing.

Q Would you please give your phone number?

MR. BADER: Your Honor, I will object for the record. If your Honor orders it, all right.

A I mean it's just personal. I don't give my phone.

THE COURT: Mrs. Blacker, this is not going to be disseminated to the public so I think it is appropriate.

THE WITNESS: All right. I mean, as a rule I don't give my phone number.

THE COURT: All right.

A Very good. I believe it is 833-9071. Offhand I am nervous. I don't recall it too well.

THE COURT: If possible.

Q You don't recall your phone number?

A I'm nervous and I mean I --

Q Don't be nervous.

A Well, let's see if I can find it. I have written it.

Yes, it's 833-9071.

Q Are you in the phone book?

A No, unlisted.

Q Are you married?

A Yes, I am.

Q What is your husband's name?

A Phillip Blacker.

Q Are you employed by Mr. Bader?

A I am.

Q How long have you been employed?

A In February it will be six years.

Q Six years?

A Yes.

Q And you are his secretary, is that correct?

A Yes.

Q Did you ever give Mr. Bader your address?

A Yes.

Q Did you ever give him your phone number?

A No, I didn't.

Q When you get withholding statements, W-2 forms, is your address on those statements?

A Yes.

Q What are your duties as Mr. Bader's secretary?

A Mrimarily steno and typing, primarily, and Dictaphone work, answering the telephone.

Q Do you do filing for him?

A Not at all.

Q You don't?

A Not at all.

Q You don't manage the files?

A I don't think I have ever been to the files; maybe once or twice. I mean there is that much stenographic work and Dictaphone work.

Q Do you take care of his mail?

A No. There is not enough time for that.

Q Not enough time?

A No.

Q Do you ever open any letters addressed to him?

A Very, very rarely, very rarely.

Q On what occasions would you open letters for him?

A If I had no stenographic work, which would be unusual, very unusual.

Q Who opens his mail?

A Mr. Bader does personally.

Q Anybody else?

A To my knowledge, I don't know.

Q What days of the week do you work for Mr. Bader?

A Tuesdays, Wednesdays and Thursdays, and I have never worked any other days of each. And from the time -- would you like the time?

Q Yes, what are the hours?

A From -- flexible, from 10 to 3 or from 10:15 to 3:15. In other words, a five-hour day, depending if I get in at 10 to 3 or 10:15 to 3:15. A five-hour day.

Q I see. Do you ever work from 10 to 3:30?

A Yes.

Q Is that your more usual time of work?

A Well, I would say the usual is about 10:20, 10:15 is more usual.

Q You submitted an affidavit in this matter, did you not?

A Yes, I did.

Q In that affidavit didn't you say that you worked from 10:30 to 3:30?

A Well, I should have been more flexible. The truth is it varies from -- I very rarely, if ever, get in at 10. I would say it is more apt to be around 10:20, but it could be 10:30 to 3:30 too.

Q Do you work for anybody else?

A No.

Q You don't work Mondays and Fridays for anybody else?

A No.

Q Could you describe generally the setup in the office of Bader & Bader?

A Yes. It's a large suite of offices, and when you walk in you have the main office with the secretary for another gentleman, the mail is delivered in that main office, and the people are received in that office. Now, my office is about --

Q Just a moment before you proceed. How many desks are there in that office?

A There are two, two desks.

Q One behind the other?

A Yes.

Q And are there any other tables or desks in that office?

A Well, there are small tables with diction- -- I mean I very rarely stop in that office. I rush through to mine. I am very busy and have no time to --

Q You have been there for six years?

A Yes, yes. There are small tables with plants and dictionaries on them.

Q Is there a conference table or something like that?

A Not in the front office, no.

Q Then where do you go after you get into the main office, into the main room, reception room.

A Well, it is almost three-quarters of a block, at least it seems that way, to my office, which is the last office in this suite of offices.

Q When you come into the reception room what do you do, take a left turn?

A Yes.

Q And then you take another left turn?

A Yes.

Q Where is your office?

A At the very end. The last office at the end.

Q How many offices are there between the reception room and your office?

A Let's see, there is one, two, three that would be, four. Four.

Q Four?

A Four, four.

Q Who are the other people in that suite of offices besides Mr. Bader?

A There is a patent attorney, Mr. Scher. He has a secretary full time.

Q What is her name?

A Diane. I don't know her last name. She

is not here too long. He's had quite a lot of secretaries.

Q Who else is there?

A And he has a part-time bookkeeper, who I understand comes in Mondays through Fridays and works I think from about 10 to 2, approximately.

Q What is her name?

A Barbara.

Q Barbara what?

A I don't know her last name. We use first names and I don't know her last name.

Q Anybody else in the office?

A No. At the present time, no. At one time there were other people.

Q Who are the other people? How long ago were there other people in the office?

A Oh, I don't remember exactly, but, say, about maybe three years ago.

Q I see.

A There was a gentleman was there. I think he did art work or something. He had an office there.

Q At least from the beginning of this year, the only --

A Were these people.

Q The only people in the office were Mr. Scher, Mr. Bader, Mr. Scher's secretary, bookkeeper, and yourself, is that correct?

A Right, right.

Q Where is Mr. Bader's office?

A Well, Mr. Bader's office is -- you walk in, you have a main office. You go round the bend, you have another office, and Mr. Bader's would be about the fourth office, and --

Q Is it next to yours?

A Not really, no. There's a -- a little walkway from mine. There is another office in between ours.

Q I see. I show you some documents that have been marked as exhibits here, Exhibits A, C, B and E.

A Yes.

Q Did you type the originals of those documents?

A Yes, I did.

Q And did you make those copies that are before you at the same time that you made the originals?

A Yes, I made copies, right.

Q Did you type them all the same day?

A I did.

Q Do you remember what day you typed them?

A Truthfully, no. Days, dates, I don't remember.

Q If you look at the ones -- not the large one -- if you look at the smaller ones, you will see on them a date of August 29th.

A Correct, right.

Q Does -- pardon me.

A Yes, I see that.

Q Do you see that date?

A Yes.

Q And it is also on the other two. Do you see that?

A This one doesn't seem to -- this one has it, two of them have it. What is this one? This one is Michael Fagan. I see. All right, that one, right, okay. And that one is Michael. Yes, I see them, right. Yes.

Q Does that refresh your recollection as to the date you testified -- and I don't mean for you to just adopt that date -- but does it actually refresh your recollection as to the date you typed it?

A Yes, because I do remember typing them and sending them out, the originals out, that day. I mean the day they were typed, in other words.

Q Will you look at the date of the large one?

A Yes.

Q What's the date on that?

A The date on the large one? This is September 5th, it says on this.

Q Can you tell me how the date September 5th came to be on the large one?

A Well, let's see.

Q That is Exhibit A.

A This is Exhibit A.

And this is to the defendant Touche Ross, right?

These are to Martin Randolph, Gary Michael, and Michael Fagan. Well, I read these three as bearing the date August 29th. These are the interrogatories I remember.

This I can hardly recall already. This was obviously not done on the same day.

Q I am asking was it done on the same day or wasn't it done on the dame day?

A Obviously not, no.

Q When did you type the one that has the date

September 5th, which is Exhibit A?

A That I cannot recall. I don't recall that one. These I do recall.

Q Did you type that on September 5th?

A At this moment I couldn't say yes or no.

Q Do you have any recollection as to how the date September 5th came to be on Exhibit A?

A I assume it was September 5th when it was typed. I don't remember.

Q After you typed the originals of those four documents what did you do with the originals?

A I remember mailing the -- these three I recall. I mailed them to the people in question, Randolph, and whatever their names are, Fagan, I remember mailing it to them, the originals.

Q Those are Exhibits C, D and E?

A Right, yes.

Q Go on, please.

A I remember mailing the originals to them.

Q Do you remember when you mailed them?

A Yes. I remember mailing them the day that I typed them, so that if it says August 29th, then that would be the day that I mailed them.

Q What did you do with the copies that you

typed?

A Well, I I took the copies and I placed them in the file folder, and I typed envelopes up for each party and I put a note on the file that hold these until the originals come back, and then conform.

Q Who was that note to?

A I just, you know, I assume -- I have nothing to do with the files, as I say.

Q Yes, I understand that.

A So I left the file on his desk, and I assume -- you know, he does a lot and I wanted it to catch his eye, so that he would not mail them --

Q The copies were not in the envelopes?

A No. No, I placed the envelopes and the copies in the folders.

Q I see. What did you do with the original of Exhibit A? That is the big one.

A The original of Exhibit A, this I tell you I don't recall this one. In other words, these I can tell you I did mail the originals. I recall them. This I can see I typed them because it looks like my typing, it is my typing; but I don't recall the actual mailing or anything.

Q Forget the mailing, but do you recall what you did with the original of it?

A I do not.

Q Do you know what you did with the copies of that one?

A I do not.

Q Is this file folder that you put them in a regular manila folder, plain manila folder?

A No. I believe it was a green type of folder. It was not a manila. It was a green, heavy -- sort of a heavy file, a green folder.

Q A fiberboard folder, would it be?

A I think you could call it that. It was not manila.

Q You don't recall what you did with the original or copies of Exhibit A?

A This one, no. No.

Q When next did you see any of the originals of Exhibit A, C, D or E, do you recall?

A I did not see any of the originals because once I typed them, once I put the file on his desk, you could say I practically have no contact whatsoever with that matter because I have a great many other typing and steno and Dictaphone jobs after that. So that Mr. Bader more or less, you know, is in charge at that point. I have nothing to do with the follow-up in

any respect whatsoever.

Q So you never saw the originals of C, D and E after you mailed them to the people to whom you sent them?

A No, I never did.

Q You never saw them?

A No.

Q When did you next see the copies of C, D and E?

A I don't remember seeing the copies again.

Q You never saw the copies again?

A No, no.

Q And after you had typed Exhibit A do you remember when after you typed that you next saw either the original or any of the copies?

A No.

Q You say that you put these in a file folder with a note attached to the file folder stating that these were to be conformed?

A Right.

Q With the original. Who told you that?

A Well, I think I had one previous experience where I know, I had learned that when you have something notarized you must conform the copies, and I remembered

that. I realized, you know, that you can't very well send copies out unless the people send them back and they are notarized. I mean, to me that was common sense. And I also remember possibly one or two instances where Mr. Bader might have brought that to my attention: I must conform copies, you know, where it is notarized.

Q Did you ever conform copies?

A I don't recall ever conforming copies. I may have but I don't recall it, because it doesn't -- the occasion did not arise as far as I can remember.

Q And did Mr. Bader give you any instructions with respect to the originals or copies of Exhibit A, C, D and E?

A No, he really did not exactly give me explicit instructions.

Q Did you ever mail any copies of Exhibits A, C, D or E? And I am talking about copies and not the original.

A No, I did not.

Q You did not?

A No.

Q Mr. Bader sent a letter to the court on September 11, 1974, which was marked as Exhibit B, in which he said that:

"On September 5th I had Mr. Merrill Sands, the secretary of the plaintiff Independent Investor Protective League, sign the answers to interrogatories," and he is talking about Exhibit A, I think.

A Yes.

Q "I further instructed my secretary to send copies of the answers to interrogatories executed by the Independent Investor Protective League to all attorneys for the defendants, and inspected these before they went out. They were properly conformed and there was no question that they were served in time."

That is in Mr. Bader's letter, is that correct?

A I don't really recall. I honestly don't. I mean I don't recall that particular one.

A This I say I remember exactly what I did. This one I really -- I mean I am just going to be guessing. I don't remember.

Q I show you this Exhibit B and ask you to look at the initials at the end of that letter and ask you whether you typed that letter.

THE COURT: This is the September 11th letter?

MR. ENO: Yes, your Honor.

A No, no, I did not type that letter.

Q Do you know who the initials are where the typist's initials are usually placed?

A I do not.

Q Did you ever see letters with those initials on it in your office or copies of letters?

A I may have possibly.

Q Do you know?

A I mean, as I say, I am so busy that I really don't, you know, have much more time than to do the actual steno-typing. I mean that's it. You can verify that with the other girls. I am extremely busy.

Q Did you ever see those initials on any other letters or copies of any other letters?

A I may have seen them. I don't know for sure.

Q Do you know whose initials they are?

A No, I do not.

Q Do you know who typed that letter?

A I do not because I know I didn't. That's not my typing.

Q May I have that back, please?

(Handed to Mr. Eno.)

MR. ENO: I wonder if the court has the original of Mrs. Blacker's affidavit.

THE COURT: I do.

MR. ENO: May I have that shown to her, your Honor, while I use the copy?

THE COURT: Yes.

(Document handed to the witness.)

Q This is the affidavit that you submitted, isn't it, Mrs. Blacker?

A Right.

Q Who prepared the affidavit?

A Well, we -- Mr. Bader told me, you know, what this was all about, and I said, you know, I saw no reason to go to court, you know. Why would I have to go to court? And I said, "Could I do you think it possible that I could submit an affidavit?" Because --

Q No, I didn't mean the reasons why you submitted the affidavit.

A Who prepared it?

Q Prepared it, yes.

A Well, I would say that I really -- I told Mr. Bader what I was going to say in it, and I would say I prepared it.

Q All right. If you look at page 2 you say

in the first sentence:

"One day I was given an assignment by Mr. Bader regarding the above-entitled case."

A Right.

Q What day was that?

A Well, now that you showed me these, I gather it was August 29th.

Q I am asking you what you meant, what you referred to when you made a statement in your affidavit.

A I said "one day."

Q That's right.

A I didn't say which day obviously.

Q I am asking you which day you referred to when you said "one day."

A Just a day. A day.

Q All right, if you can't make it any more specific than that. Is that right?

A That's right. I didn't really recall the day at the time I said it.

Q What was the assignment that you were given by Mr. Bader?

A As I recall it, it was a Dictaphone assignment.

Q What was it to do?

A And it was these, these.

Q To type up these answers to interrogatories?

A Right, right.

Q What did you mean in the second sentence when you said Mr. Bader subsequently left the office?

A I know that Mr. Bader was not there at the time I typed these. I don't remember exactly whether or not he was there when I walked in. That I can't vouch for. I do know that I did these from a Dictaphone, that I do recall, and I do know that he was not in the office, because when I did them I remember thinking I should check with him, but I know you are not supposed to mail the copies, you know.

Q What was the significance of your putting in the sentence in your affidavit:

"Mr. Bader subsequently left the office"?

What was the purpose of putting that in your affidavit?

A To bring out the fact that I had -- I remember that I had typed these when he was not in the office, and I remember that I had mailed them when he was not in the office. That was the idea. I know that he was not here when I did this.

Q What led you to put that into your affidavit?

What was the significance of the statement. What were you trying to impress the court with by that statement?

A That I had taken it upon myself not to mail the copies. That's the only thing I can think of why I would have put that in.

Q You can't remember now why you put that in. Did you have a discussion with Mr. Bader about that statement?

A No. As I say, I told Mr. Bader, you know, as much as I remembered about these, and I guess the only reason I put that in was to bring out that I took the liberty of putting the copies in the folder without asking.

Q Looking at your affidavit, and thinking about it?

A Yes.

Q Does this have any connection with the fact that the Exhibit A may have been typed by you on September 5th?

A I don't recall this one. I mean I don't recall anything that would make me remember when I typed it or -- now, what I mean, in other words, it has almost no significance to me as far as that goes.

Q September 5th was a Thursday. September

5, 1974, Mrs. Blacker.

A Yes.

Q Were you in the office that day?

A I must have been in the office because I am in on Thursdays, right.

Q You were in generally throughout the month of September on each Thursday?

A I was in, I have been in all the time on Thursdays, right.

Q What hours were you there on September 5th, do you recall?

A Well, as I say, the average time that I get into the office, I would say the average, is 10:20 -- 10:15 to 10:20 is average -- but I could come in a little earlier, I could come in 10 minutes later.

Q Can you tell me, if you can recall -- because this date must have been something that has been mentioned in view of these proceedings here -- what you did that day, on September 5th?

A Truthfully, no, I do not recall September 5th. It has no significance whatsoever to me.

Q Did you see Mr. Bader there that day?

A Frankly, I don't remember.

Q You don't remember?

A September 5th doesn't mean anything to me, nothing at all.

Q Did you know that there was a controversy existing with respect to the date of September 5th with Mr. Bader? Did Mr. Bader ever mention that to you?

A He did ask me if I remember where he was September 5th, and I said, and I say again, I told Mr. Bader, "I do not recall September 5th.

Q Shortly after September 5th did you have any conversation with Mr. Bader about what had occurred on September 5th?

A Not at all.

Q Never, nothing?

A Nothing, not at all. I mean September 5th doesn't mean anything to me except as recently, you know, when Mr. Bader asked me do I remember September 5th. I said no.

Q When did he ask you that?

A When? I don't remember exactly when but I do remember him asking, "Dorothy, do you remember where I was September 5th?"

I said, "September 5th means as much to me as July 24th or something. It doesn't have any signifi-

cance."

Q Do you remember Mr. Bader at any time telling you he was leaving the office to go to St. Louis?

A No, I do not. I do not recall it.

Q Do you ever remember him telling you that he was leaving the office to go to the New York Law Institute?

A In the past he has said that on occasion, but I wouldn't remember when he said it. He has gone and said, "I am going to the library," or something. Sometimes he is not even specific which library or what kind of library, you know.

Q Does he tell you where he is going?

A Truthfully, not too often. I mean he will -- if we have appointments in the appointment book I will know where he is, and that is not kept strictly either, but many times I will walk in the office and I will not know whether he is in or out or coming back, and if I see work on the Dictaphone and I put that on, then I very often will learn where he is. But other than that, I am not always sure where he is.

Q Do you know a man named Merrill Sands?

A Yes.

Q Have you met him?

A Not personally, no.

Q Have you ever seen him?

A No.

Q Spoken to him on the telephone?

A About three times or so, but not a conversation as such.

Q Have you spoken to him recently?

A Not very recently.

Q Has he spoken to you about the circumstances of September 5th?

A No.

Q He has not?

A No.

Q Your testimony is that after you typed those Exhibits A, C, D and E you had no conversation with Mr. Bader about those documents at all, is that correct?

A Correct.

Q Did he ever tell you that you should be on the alert to look for a letter coming from the people to whom you mailed the originals, that is, C, D and E?

A No.

Q He did not?

A I don't remember him saying that, no.

Q Did he ever tell you that September 5th

was the last day that he had under the court's order to serve the answers to those interrogatories?

A No.

Q You have already testified that you have never seen the originals of any of those answers to C, D and E, is that correct, even to this day?

A Correct.

Q Did you ever see an envelope from Mr. Randolph?

A No.

Q Did you ever see an envelope from Mr. Fagan or Mr. Michael?

A No.

Q No.

A No.

Q Did you ever see any answers from Mr. Randolph?

A No.

Q You have never seen them to this day?

A No.

Q Have you ever seen conformed copies of the answers of Mr. Randolph or Mr. Fagan or Mr. Michael?

A No.

Q Since you say you have never seen Mr. Sands, you never saw him in the office on September 5th, did you?

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A No.

Q Were you in the office on Friday, September 6th?

A I have never been in on a Friday.

Q And you weren't in on Saturday, September 7th, or Sunday, September 8th?

A No.

Q Were you in on Monday, September 9th?

A No.

Q Were you in on Tuesday, September 10th?

A A Tuesday? I don't remember the date but I know if it was Tuesday, Wednesday or Thursday, I was there.

Q So you were there 10th, 11th and 12th?

A I wouldn't know by the 10th; I would know I was Tuesday, Wednesday and Thursday, if that was the 10th, 11th and 12th.

Q And you weren't there on Friday, the 13th?

A No.

Q Did you ever see any letters that my firm, and particularly myself personally, sent to Mr. Bader under dates of September 6th and September 7th by mail and under date of September 9th by hand?

A I don't recall.

Q I will show you copies of those letters --

A I don't recall.

Q -- and ask you whether you recall ever seeing those (handing).

That is Exhibits K and I.

A No, I do not recall this. I do not recall either of these, no. As I say, I very rarely, if ever, see letters coming in. It's only material I type that is going out.

Q Did Mr. Bader ever speak to you about the mailing of the unconformed copies of the answers of Messrs. Randolph, Fagan and Michael?

A Well, he did ask me -- I don't remember wheh he asked me -- but he said, "Did you mail those copies of the Teleprompter,"whatever they were,"interrogatories? Did you mail the copies to the attorneys?"

I said, "Why would I do that? I put a note on the file. Why would I mail them out after I put a note on the file?" I said, "Of course not."

Q Any other further discussion with Mr. Bader on the subject?

A He didn't say anything. I mean, I said, "Wouldn't that be ridiculous to mail them out after I bothered to type a note, 'Don't mail them out'?"

Q That was the sum and substance of the discussion?

A Yes, nothing else.

Q Nothing else?

A No. I mean I thought it was sort of a silly question to ask me if I mailed somethign out.

Q Do you remember when he asked you that question?

A I do not remember when, no.

Q Did he ever say to you that you had gotten him into hot water, or words to that effect?

A No, he merely asked me, "Did you mail them out?" I said -- I laughed and I said, "Why would I [illegible]"

[illegible] when you had the conversation with him in some general area, if you can't remember specific dates? Was it within the last couple of weeks or before that?

A I'd say -- I don't remember when the conversation was. Truthfully, I mean it could not have been too long ago but I don'tremember him asking me. I mean, I was sort of proud that I had known enough not to mail them, I mean, so that when he asked me if I had mailed them, that's why I remember the conversation. I was saying, you know,"If I had the foresight to put the

note on the folder, why would you want to ask me if I mailed them," in other words. But I don't remember when.

Q Could you tell me again why you put that note on the folder? What induced you to do that?

A So that more or less maybe it would catch his eye. You know he has his desk piled high and the whole office is piled high with no filing system.

Q Why would you want to catch his eye? Why would you want to give him that message? Wouldn't he know that fact without the message?

A I wanted to sort of let him know that I didn't mail them either. He may have said, "Oh, my God, I forgot to tell her not to mail them. I wonder if she did." So I thought to myself, "I better put a note on here. He is not here so I better put a note on here telling him that I knew enough not to mail them."

Q You have typed many answers to interrogatories, haven't you?

A Well, I don't know many but I have typed them.

Q Quite a few, haven't you?

A Yes.

Q You are accustomed to put that kind of a note?

A Well, the ones that -- as far as I know, they have not had to be notarized. You know what I mean? This is like--

Q This is the first time you have seen notary --

A I don't even recall where, you know, I mailed interrogatories to someone and that they had to notarize them and mail them back. I don't recall too many instances, if any.

Q Did Mr. Bader ever tell you that Mr. Sands had been in the office on September 5th?

A Not as such, no.

Q What do you mean, as such?

A September 5th, as I say, does not mean a thing to me, not a thing.

Q Did he ever tell you that Mr. Sands had been in the office at or about September 5th, in that period?

A He mentioned later that Mr. Sands had been in the office. The date doesn't mean a thing to me.

Q When did he mention that to you?

A I don't remember specifically when he mentioned it to me, but I do remember him saying that Mr. Sands had come to the office.

Q Do you know how long after September 5th he mentioned that to you?

A No, I don't remember the dates, no.

Q Do you remember what else -- did he say anything else at that time when he mentioned that Mr. Sands had been in the office on September 5th?

A Well, I don't remember. As far as all I know is that he had asked me if I had mailed these. And when he asked me I said no, as I told you. Then that was it, that was the end of the conversation.

And then as far as him mentioning about Mr. Sands having been in the office, it wasn't until he actually told me that Mr. Sands had made copies to the attorneys.

Q When did he tell you that?

A I honestly do not recall exactly when.

Q Do you know how long ago from today he told you that?

A No, I do not recall. A few weeks.

Q You have no recollection? The last couple of weeks?

A This didn't mean that much to me personally. You must realize that.

Q Did he mention it within the last couple of weeks?

A I don't remember exactly when he told me.

Q You have no recollection at all?

A No. As I say, this doesn't mean that much to me that I am going to remember dates.

Q Did he ever tell you that Mr. Sands had been in the office to check his mail?

A No. No, he never did, no.

Q Do you remember speaking -- did you speak to me on September 10th?

A I don't remember the date, but I do remember speaking to you because you were angry. That's why I remember it.

Q Will you tell me what was said in that conversation? Did we have one or more than one conversation that day?

A We might have had two. As I say, normally, with all the work I have, and telephone messages, et cetera, I don't remember conversations as such; but the fact that you were angry I do recall.

What do you want me to tell you?

Q What was your conversation or conversations, as you recall it?

A Mr. Bader asked me, I believe he called me, phoned in, he was at depositions, if I remember, and he had asked me to call a Mr. Eno. I didn't know who Mr. Eno was, truthfully. And he gave me the telephone number and he said, "Call Mr. Eno and tell him that the information" -- something about the information that Mr. Eno wants is not available, and that it would be available, or something, in a few days. That conversation to me was something I repeated. I didn't know what information, et cetera.

I called you, and I told you that and you got angry, I remember. And you said something, "You mean in the information," or something,"is not in the office?" and I didn't even know what information you were referring to.

So I said, "No, I am just mouthing his words," and you said something, I remember, to the effect that, "Well, you better tell him that if he doesn't have the information I am going to call the judge."

And when I heard you say you are going to call the judge I says, "Oh, gosh, what is this?" you know. And I said, "But I don't know if I can reach him." Be-

cause I know you are not supposed to call someone at a deposition unless it is a matter of urgency, and I told you that, and you said, "Well, you better get him."

I think you said something about, "I'm giving you a certain amount of time."

I said, "Can't you make it a little longer than that? Suppose I can't get him for some reason," and you hung up.

And I remember calling -- I don't remember who I called at the time, but I remember calling the place where Mr. Bader was supposed to be, and the girl told me he was out to lunch, and I said, "Please have him call his secretary as soon as he walks in."

Q So that your recollection is that Mr. Bader spoke to you. What day did he speak to you and tell you to call me?

A I haven't got the slightest idea what date.

Q But it was the day you called me you say Mr. Bader spoke to you and asked you to call me, is that correct?

A Right.

Q That was in your office?

A He called me from the outside and I was in the office, right.

Q And he asked you to leave that message?

A He asked me to call a Mr. Eno, and gave me your phone number, and to give you that information.

Q What was the message?

A That Mr. Bader asked me to call and tell you -- I am his secretary; Mr. Bader asked me to call you and tell you that the information that you need is not available, he doesn't have it, it is not available, something to that effect, but that you could have it, I think he said, in about a few days, or something.

Q And that is what you told me personally when you called?

A I don't remember the exact words but it's the gist of it.

Q But then you called me?

A Pardon me?

Q You said then you called me?

A I called you and repeated that, right.

Q And you spoke to me and told me that, is that right?

A Yes, I did, right.

Q You are sure of that?

A I remember because you were angry.

Q But you are sure of the conversation as you

have described it?

A I mean not word for word, but the idea.

Q The substance?

A You wanted something I know. I didn't know what you wanted. Hadn't the slightest idea what it was. I didn't even know what the case was. You know, I was just merely repeating something he asked me to do for him.

Q Do you remember what time you spoke to Mr. Bader on the telephone?

A I would assume that you mean when he had called me or when I called --

Q When he called you from the outside.

A I would assume that it was early, before 12, of course.

Q About what time of the day?

A Oh, I don't recall the time exactly, but I remember your saying something, I think, about "noon," so it would have to be before that. I don't remember exactly what time.

Q You say he was on a deposition, wasn't he?

A I believe he was at depositions, right.

Q You didn't get in the office until somewhere around 10:30, is that right?

A Correct. Right.

Q So --

A I don't know. I wouldn't swear, but I am positive he had phoned that in to me. A hundred per cent sure it was a phone call.

Q And that you called me and gave me that information?

A Yes.

Q Do you see this gentleman sitting over there?

A Yes.

Q Did you ever see him before today?

A I don't remember.

MR. ENO: I have no further questions.

MR. BADER: No cross, your Honor.

THE COURT: Let me ask a question. Mr. Eno, what date do we independently fix the date of these two conversations as being?

MR. ENO: Which conversations?

THE COURT: The 9th?

MR. BADER: The 10th, your Honor.

MR. ENO: The ones with me?

THE COURT: The ones with you. The 10th?

MR. BADER: 9th and 10th.

MR. ENO: Just a minute, Mr. Bader. The

judge was speaking to me.

MR. BADER: I thought he was speaking to both of us.

MR. ENO: If you are referring to Mrs. Blacker's conversations with me the date I spoke to her, but not in substance that she has testified to, it is September 10th.

THE COURT: September 10th.

MR. BADER: Then I had a conversation with Mr. Eno's secretary on September 9th.

THE COURT: That is a Tuesday.

MR. BADER: September 10th is a Tuesday, sir. September 9th is a Monday, and I think we fixed those two dates by Mr. Eno's memorandum.

THE COURT: Mrs. Blacker, did you know at any time that Mr. Bader was going, was in, or had been in St. Louis?

THE WITNESS: I know he -- in the past he's been to St. Louis, but when --

BY MR. ENO:

Q This is in September now.

A I don't remember specifically. I know he has been going to St. Louis.

Q Let me ask you this. You say you don't

remember really one Thursday from another, but this September the 5th, where were you, if I may ask, on the Labor Day weekend?

A I spent that at home.

Q Do you remember the weekend?

A Not vividly.

Q You do remember the Labor Day weekend, the long weekend?

A Yes.

Q We are talking about Thursday after that weekend.

A Yes.

THE COURT: Does that help you to orient that particular Thursday? This is the very beginning of the fall.

THE WITNESS: It doesn't have any meaning to me, your Honor. The day, I mean.

THE COURT: But you cannot place it as being anything about the Labor Day weekend and then thinking about what happened later that week.

THE WITNESS: Not really, no.

THE COURT: You say you have a memory of Mr. Bader on some occasion going to St. Louis?

THE WITNESS: Yes, sir, right.

THE COURT: When did he go to St. Louis, in memory?

THE WITNESS: I know he's been there several times, but I don't recall just when.

THE COURT: Do you remember him going in early September after the Labor Day weekend?

THE WITNESS: I would not remember just when. I don't really remember just when he went.

THE COURT: But you do know he went?

THE WITNESS: Yes.

THE COURT: This is the day before he went. Does that help you to fix the 5th of September in your mind?

THE WITNESS: No, your Honor, it does not.

THE COURT: Your telephone call with Mr. Eno was on a Tuesday. Do you remember that day?

THE WITNESS: I would not know if it was a Tuesday. I mean I --

THE COURT: You remember the day of the phone call?

THE WITNESS: I don't remember the date of the phone call. I remember calling him. I don't remember the date I called him.

THE COURT: I am not asking that. You

remember that there was a day on which you and Mr. Eno had a phone conversation?

THE WITNESS: Yes, your Honor.

THE COURT: Which you remember because he became angry?

THE WITNESS: Got angry, right, right.

THE COURT: All right. This was the first day that you were at work after the 5th of September. So the day we are talking about being the 5th of September was the day immediately prior to -- the working day immediately prior to the day you spoke with Mr. Eno. Does that --

THE WITNESS: I say the days and the dates --

THE COURT: Think about it. I don't care about any days of the week or days of the month.

THE WITNESS: Right.

THE COURT: I am trying to make your mind focus on a day that you and Mr. Eno had a particular conversation, and this is the very prior business day. Think about it and see if you can remember that prior business day.

THE WITNESS: I do not, your Honor.

THE COURT: All right. Let me ask you

this. Exhibit A, I take it, is the answer to --

THE WITNESS: Touche Ross, is it?

THE COURT: -- further answer to the interrogatories of defendant Touche Ross & Company, is it?

THE WITNESS: Yes, your Honor, it is.

THE COURT: And it bears on the next-to-the-last page the typing, "Dated: September 5, 1974."

THE WITNESS: Yes.

THE COURT: You say you typed this?

THE WITNESS: Yes, that's my typing, right.

THE COURT: Do you customarily put upon a piece of paper that you type the date upon which you weren't typing it?

THE WITNESS: Very, very rarely. I wouldn't do a thing like that. I mean, no, no.

THE COURT: You type it --

THE WITNESS: You date it on the day you are typing it.

THE COURT: In other words --

THE WITNESS: Yes, your Honor.

THE COURT: -- you normally would put in

there the date you are typing it?

THE WITNESS: The date you are typing it, right, right.

THE COURT: Very good.

I assume if you were to depart from that practice it would be because somebody had given you instructions to date the instrument some other date?

THE WITNESS: That would be right, yes.

THE COURT: Do you have any recollection of being instructed to date Exhibit A some other date than the date upon which you typed it?

THE WITNESS: No, your Honor.

THE COURT: All right. Thank you very much.

(Witness excused.)

J A M E S K E L L E Y N E V L I N G, called as a witness by defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q Mr. Nevling, you are an associate in our office, is that correct?

A Right.

Q Were you in Mr. Bader's office to serve an

order to show cause on September 13, 1974?

A Yes, I was.

Q Did you speak to a lady sitting in the front office at the back desk? There were two desks in that front office and she was sitting in the rear desk?

A That's right.

Q Would you tell us what your conversation with that lady was?

A I came into the office and indicated that I wanted to serve an order to show cause on Mr. Bader. She said that Mr. Bader was not in the office at that time, and so I asked her a number of questions. I asked her what her name was, and she indicated that her name was Dorothy Blacker. I asked her whether anyone else in the firm of Bader & Bader was there, and she said that no, no one else was.

I asked her whether she was Mr. Bader's secretary, and she stated that she was not. And I asked her what her position was, and I believe at this point or at some point she asked me why I was asking all these questions and what I wanted, and so I explained that I had an order to show cause which had been signed by Judge Owen and that I wanted to serve it on Mr. Bader, and she declined to give me any information as to who she

worked for or what she was doing there, aside from indicating that she had nothing to do with Mr. Bader or the firm of Bader & Bader.

Q You saw the lady who just testified?

A Yes.

Q Who gave her name as Mrs. Blacker. Was this the lady who identified herself as Mrs. Blacker?

A No.

Q Will you describe the lady who identified herself to you as Mrs. Blacker, as best you can recall?

A Well, she was shorter than the woman who just testified, she had a different hair-do, and quite different appearance. I think she was a little older than the whoman who testified here today. She had different facial appearance.

Q She just was not the same woman at all?

A That's right.

MR. ENO: I'd like to ask Mr. Nevling some questions later on, your Honor, but I wonder if I could just suspend with him now and take these other ladies.

THE COURT: You may.

Mr. Nevling, no question she identified herself as Mrs. Blacker or Dorothy Blacker?

THE WITNESS: Yes, your Honor.

THE COURT: What did she say to you?

THE WITNESS: I asked her what her name was, and she said it was Dorothy Blacker.

THE COURT: Did you write that down or is this your memory?

A Yes, I had an envelope that the order to show cause was in, a regular Rosenman, Colin envelope, and I wrote that on the envelope. I don't have the envelope any longer because when I returned to the office I prepared an affidavit of service, and then I destroyed the envelope.

MR. ENO: It is mentioned in Mr. Nevling's affidavit of service on the order to show cause that he went into the office and he spoke to this lady who gave her name as Mrs. Blacker, and he went on as to what he had done in attempting to serve the order to show cause, because the order said it had to be served on the attorney personally.

THE COURT: Very good, thank you.

(Witness temporarily excused.)

R O S A L I N D R O S E N, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENO:

Q Mrs. Rosen, you are employed by our firm, are you not?

A Yes.

Q Did you on September 9th, at about 9:15 in the morning, receive a message from a gentleman who identified himself as Mr. Bader?

A I did, sir.

Q I show you this Exhibit H and ask you whether that is your handwritten memorandum with the message you received?

A Yes.

Q Is that the complete message that was given to you, as you recall?

A Verbatim.

Q And did Mr. Bader or the man who used the name Mr. Bader use the word "photocopies"? Is that his expression?

A Yes.

MR. ENO: I have no further questions, your

Honor.

MR. BADER: Just one question, your Honor.

THE COURT: By all means.

MR. BADER: It is getting late, your Honor, and I would like to get this thing over.

CROSS EXAMINATION

BY MR. BADER:

Q Are you sure, positive in your own mind, that I used the word "photocopies" and didn't say "copies"?

A I don't know where I could get the word "photocopies," which is down here.

Q I couldn't have said something different, I couldn't have said another word, perhaps, that sounded like photocopy?

A No, sir.

Q You are absolutely positive about that?

A Positive.

MR. BADER: I have no further questions, your Honor.

THE COURT: Very good.

(Witness excused.)

M U R I E L K R E S H, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EHO:

Q Mrs. Kresh, are you employed in our office as my secretary?

A I am.

Q Did you at about 9:25 in the morning of September 10th receive a message from a man who identified himself as Mr. Bader?

A I did.

Q Is it correct that I was not in the office at that time?

A You were not.

Q Is this Exhibit J that I show you the message that you received from that gentleman?

A This is what I received.

Q Is that the complete message that you received?

A To the best of my knowledge, that's it.

Q Did the gentleman who gave you that message use the word "photocopies"?

A Yes, he did.

MR. ENO: I have no further questions.

MR. BADER: I will ask you the same question that I asked your colleague.

CROSS EXAMINATION

BY MR. BADER:

Q Are you sure I used the word "photocopy," you are absolutely positive of that.

A I could be positive because it wouldn't be an expression that I would use myself.

Q Could it have been photographic copies?

A Photocopies.

Q Could it have been verbatim copies? You are sure it was photocopies?

A There would be no reason for me to write anything other than what I --

Q As long as you are positive I don't want to take the time of the court any further.

THE COURT: Thank you. You may step down.

(Witness excused.)

MR. ENO: Now I would like to ask Mr. Bader some further questions.

MR. BADER: Certainly.

I. W A L T O N B A D E R resumed and, having been previously duly sworn, testified as follows:

THE WITNESS: This, as your Honor can understand, has been quite distressing to me. This is the first time in my 25 years' experience that I have been accused of something that smacks of improper practices, and you can understand how this really worries me.

CROSS EXAMINATION

BY MR. ENO:

Q Mr. Bader, I'd first like to get clear where you live. Do you have more than one residence?

A Yes. I am a legal resident of the the State of Connecticut. I live in Brookfield Center, and I vote from Brookfield Center. However, because of the fact that I am working in New York City, I occupy an apartment at 40 Morrow Avenue in Scarsdale, New York, but that is not my legal residence.

Q What is your residence in Brookfield, Connecticut? What is your address?

A Beech Tree Road.

Q Do you have a residence also in Brooklyn?

A That is my father's house.

Q But you are listed in the phone book?

A That's correct, and I can tell you exactly why. I lived in Brooklyn, I lived in Brooklyn for about two and a half years previous to today, until I moved to Scarsdale and Brookfield Center, and because of that I still keep my listing in Brooklyn. My father, who is a member of the firm, is a man who unfortunately is blind, practically blind, and in addition to which he is practically crippled, he can't get around. Well, now, I like to keep him as a member of the firm, and as a matter of fact we have telephone switchovers and all kinds of gadgets in the office so that if somebody calls him he can be called in Brooklyn. As a matter of fact, I think one of your nice gentlemen, possibly Mr. Nevling, actually served papers on him in Brooklyn at one time.

THE COURT: All right, go ahead.

Q You heard Mrs. Blacker's testimony, or the lady who identified herself as Mrs. Blacker, and she testified that you have an associate named Mr. Scher, is that right?

A That's correct. Mr. Scher is one of my associates.

Q Is he affiliated with your firm or does he

just share space with you?

A No, sir. Well, it's a very -- it's a very peculiar arrangement, if you'd like me to expatiate on it.

Q Not really any expatiation. If you can just briefly tell us what yout relationship is with Mr. Scher?

A Mr. Scher is the senior partner of a patent firm by the name of Richards & Geier, and I am an ostensible partner of that firm, the partnership consisting of being a partner on such matters as he calls upon me to work on.

Q And you do work for Mr. Scher?

A I haven't done anything for Mr. Scher in the last year and a half, but I have done something before. And as a matter of fact I have just finished a case for him before Judge Knapp last Friday.

Q So that you do call upon each other to do things for one another occasionally; is that correct?

A He calls on me. I don't call on him.

Q You don't call on him for anything?

A No, sir.

Q Did you ever ask him to look at your mail?

A No, sir.

Q Do you a favor?

A No, sir. As a matter of fact, I had a terrible amount of trouble with his secretaries. He really picks winners. And the last secretary that we had -- that he had -- is a woman who in my opinion was crazy.

THE COURT: All right. We don't need to get into that.

A Okay. But I just wanted to tell you that I have a tremendous problem not only with the other secretary but with this secretary. I can't get her to give me the right time.

THE COURT: All right, go ahead.

Q You testified that when you left your office on September 5th you went tothe New York Law Institute, is that correct?

A Yes, sir.

Q And you stayed there until 7 o'clock, is that right?

A Yes, sir.

Q Where did you go then?

A I went to Newark Airport.

Q And what were you going to Newark Airport for?

A Get on an airplane to St. Louis.

Q Which plane?

A There is a flight going to Indianapolis. It's an Alleghany Airlines flight. I don't know the flight number. It leaves at 8:05 from Newark. You go to Indianapolis, and from there you switch on to a connection for St. Louis. The only reason I took that flight and that crazy schedule was that I was at the New York Law Institute, and from there I could get onto the Hudson Tubes and get over to Newark, which is much easier traveling than trying to get to either LaGuardia or Kennedy.

Q What happened when you got there?

A I got there too late.

Q You missed the plane?

A Yes, sir.

Q What did you do then?

A Went back to New York.

Q Where to?

A Well, first thing I did, I took the express bus that they have at Newark Airport. That took me over to the Port Authority Terminal over at 40th Street and Eighth Avenue. I then got off that bus, went onto the crosstown bus and went to Grand Central, and at Grand Central I went up to, I believe it was, Bronx-

ville. I am not sure now, don't hold me to it. There are three stations I use. And I called my wife before I left and I told her to pick me up, that I was coming home, that I missed the plane to St. Louis.

Q You remember all of that very distinctly?

A That I happen to remember. It just so happens the reason I remember it is because I missed the plane.

Q And you stayed over. So you never did go to St. Louis on September 5th, is that right?

A No, I didn't go to St. Louis until September 6th at 7 o'clock in the morning.

Q Where did you take that plane from?

A From Newark Airport.

Q How did you get from Scarsdale to Newark Airport at 7 o'clock?

A With my automobile.

Q Your car?

A Yes, sir.

Q You left it in Newark?

A Left it in the Newark parking lot.

Q And you stayed in St. Louis on September 6th and September 7th?

A Yes, sir.

Parenthetically, your Honor, I forgot to bring to this hearing, because I have been a little bit nervous, the registration records of the hotel in St. Louis and the hotel in Washington, and I wonder if I could have your Honor's permission to put that in. I will send Mr. Eno copies of them.

THE COURT: Mr. Eno, any objection?

MR. ENO: No objection.

Q What hotel did you stay at in St. Louis?

A The Mayfair Hotel, sir.

Q And you returned on September 7th, is that correct?

A Very late, yes.

Q What time did you leave St. Louis?

A I believe I left St. Louis somewhere around 6 o'clock and got into New York at about 10.

Q Where did you get to in New York?

A Newark Airport, sir.

Q Where did you go when you arrived in New York?

A I believe I went to Scarsdale and went to bed.

Q Do you remember what time you got home that night?

A Well, Mr. Eno, I am trying to be accurate. I really -- it was late. It was late.

Q Does your wife reside with you at this Scarsdale address?

A Oh, yes. Yes, sir.

Q What did you do on September 8th?

A Went to Brookfield Center.

Q What time did you go there?

A I really don't remember, Mr. Eno, but I know we did go there during the day some time.

Q Do you remember what time you went?

A I don't remember the time, no, sir.

Q How much time did you spend in Brookfield Center?

A Most of the day, I think.

Q Who did you see there?

A Saw Mr. Sands.

Q Who else?

A My mother-in-law.

Q Who else?

A I think that's all.

Q Is it your mother-in-law who has the house in Brookfield Center?

A Yes, sir.

Q She owns the house?

A Yes, sir.

Q What was the occasion for your seeing Mr. Sands on September 8th?

A Mr. Sands? I wanted -- I believe that I wanted to ask him whether he was going to New York on September 9th; he could go and check my mail.

Q Did you see him personally?

A On the 8th? Yes, sir.

Q When did you make the arrangements to see him?

A Gosh, I don't remember. Either personally or by phone, I don't know just how it was done.

Q How much time did you spend with him?

A Hour, hour and a half, maybe.

Q And he said he would come to New York to look at your mail, is that correct?

A Yes, sir.

Q And he had to get there very early, didn't he, from Brookfield Center?

A Yes, sir.

Q What time did you tell him to be in your office?

A Told him to get there as close to 9 as he

could, preferably earlier. Our mail comes in about 8, Mr. Eno.

Q You say you went to the Law Institute to work on the Penzzoil matter, is that right?

A Yes, sir.

Q What is that matter?

A That is a case involving convertible debentures of Pennzoil Company that I have with Mr. Shostak in St. Louis.

Q Whom do you represent in that matter?

A Mr. Steinberg, a debentureholder, sir.

Q And who is Mr. Shostak?

A Mr. Shostak is an attorney in St. Louis whom I am associated with in various matters.

Q What was involved in the Pennsoil matter in St. Louis which compelled you to go there on September 6th?

A That was only one of the matters that I went to St. Louis about, sir.

Q I see.

A That was only one of the problems. We discussed many other problems. The primary problem was not the Pennzoil matter.

Q It was not the Pennzoil matter?

A No, sir.

Q What was the primary problem?

A The primary problem involved a case known as, I believe, Diversified Packaging, involving a trademark problem in Florida.

Q What was the occasion for you to go to St. Louis on September 6th in connection with that?

A Had to write an appeal brief in the Fifth Circuit.

Q When was that to be filed?

A A few days later.

Q And you had to write it out in St.Louis, is that correct?

A I had to work with Mr. Shostak in St. Louis on the brief, yes, sir.

Q Did you meet with anybody else in St. Louis?

A Mr. Oherrin.

Q Who is Mr. Oherrin?

A He is an associate of Mr. Shostak who is also working on these matters.

Q Is he in the same firm as Mr. Shostak?

A No, sir. He comes from a small town known as Maoden, Missouri. Just a moment -- if your Honor

will indulge me for just one moment --

Q I will accept Malden, Missouri.

THE COURT: Go ahead.

Q Was he working on the brief with you?

A Yes, sir.

Q That is what you spent your time in St. Louis doing, writing this brief for the Fifth Circuit?

A Yes, sir, and law research.

Q Pardon me?

A And law research.

Q What were the necessities of the Pennzoil matter that compelled you to go to the Law Institute on September 5th and stay there until the time that caused you to miss your plane flight to St. Louis?

A Sir, there is a very serious problem in that case.

Q I am not asking you whether the problem was serious. I was asking you what was involved in the case that made it urgent for you to go to the Law Institute on September 5th to do that work.

A Well, there were motions filed in that case to dismiss onthe ground that we did not comply with the provisions of the indenture under which the debentures were involved, and the provisions of this indenture

under which the debentures were involved, and the provisions of this indenture required certain things to be done involved what's called a no-action clause.

Now, there are split decisions as to whether or not such a no-action clause is valid or invalid. We were subject to a motion which was coming up only about a few days later, and since Mr. Shostak and Mr. Oherrin did not have the expertise, they insisted that I give them a thorough memorandum, and this was the only time I had to work on it.

Q When did you say those motions were returnable?

A A few days later. I don't know just when. They weren't returnable when I went to St. Louis, they were returnable about a week or so after that. The motions were subsequently adjourned and subsequently they were argued and I believe subsequently I did go to St. Louis again and argue them.

Q You argued the motions?

A I believe I did, sir.

Q Are you sure you did?

A Well, I know that I appeared before Judge Wanglin in St. Louis.

Q I am just asking you a simple question. Did you argue the motions?

A Well, we argued -- I think we argued two and then we consented to one and then we did all kinds of things.

Q Did you do the arguing?

A Yes, sir.

THE COURT: Mr. Eno, I hage to cut you off but Mrs.Owen and I have a dinner engagement and we are going to the Philharmonic Hall. And I envisaged testimony of one lady and I have gotten three ladies and a gentlemen and another gentleman.

MR. ENO: Can we have another hour with your Honor?

THE COURT: I was going to say I think I am going to have to carry you. Is tomorrow evening acceptable?

MR. ENO: Tomorrow is fine with me.

MR. BADER: The only problem, your Honor, I just wonder if we -- what is Mr. Eno trying to drive at?

THE COURT: I will await his briefing me on that score, but --

MR. ENO: Tomorrow would be fine, your Honor.

THE COURT: All right.

MR. BADER: What time, sir?

THE COURT: I could commence at 4:15 tomorrow, if that is agreeable to you.

MR. BADER: 4:15 is fine.

MR. ENO: Very good.

(Adjourned to Thursday, November 14, 1974, at 4:15 p.m.)

INDEPENDENT INVESTOR PROTECTIVE
LEAGUE, et al.

vs.

TELEPROMPTER CORP., et al.

New York, November 14, 1974,
4:15 p.m.

Hearing resumed.

- -

I. W A L T O N B A D E R resumed.

MR. ENO: If your Honor please, Mr. Bader has produced these hotel records.

THE COURT: Very good. Shall we mark them.

MR. ENO: I think we ought to mark those exhibits and I will just ask him.

CROSS EXAMINATION CONTINUED

BY MR. ENO:

Q Mr. Bader, you have produced these American Express tickets showing your presence in St. Louis on September 7th and your presence in Washington or Arlington, Virginia on September 10th.

A Well, I think what you will find on that is that --

THE COURT: Why don't you offer them in evidence and I will receive them and look at them.

THE WITNESS: I just wanted to make an explanation with respect to Mr. Eno's statement. These bills were paid to the 7th, but it refers to a stay in St. Louis for the 6th. In other words, this is the hotel record you come in on the 6th and of course you pay the next day. And the same with Washington: this is the 10th, which is the day after I left, and of course I went to the hotel on the 9th.

THE COURT: Very good. Let's mark that as an exhibit -- what is the next number?

MR. ENO: The next number -- I think we might as well mark it as Mr. Bader's exhibit.

THE COURT: Exhibit A.

MR. ENO: Plaintiffs' B.

(Plaintiffs' Exhibit 3 was received in evidence.).

xx THE WITNESS: Were there exhibits I introduced prior to this?

MR. ENO: Yes, you introduced some post office --

THE WITNESS: Yes, yes, you are absolutely right. You are absolutely correct.

MR. ENO: On that score, on these preceding exhibits that have been marked for identification I would like to offer them in evidence. They have all been testified to and --

THE WITNESS: No objection, your Honor.

THE COURT: Very good. They will be received.

BY MR. ENO:

Q Mr. Bader, is Mr. Sands related to you or your family?

A Well, I am married to his dister. If thar makes me a relation, I suppose I am, but I knew him before I was married to his sister. As a matter of fact, he was the one who introduced me to his sister.

Q Who is Richard Gordon?

A Richard Gordon is the president of the Independent Investor Protective League, sir.

Q Where does he live?

A He lives in Freeport, New York.

Q Does he have an office in New York City?

A 19 West 24th Street.

Q What is his business?

A He has many businesses. At the present time I believe he is in the pet supply business, in addition

to being president of the league.

Q He executed the first answers of the Independent Investor Protective League to the interrogatories that were addressed by Touche Ross, did he not?

A Yes, sir.

Q Was there any reason why you didn't have him execute the second set of answers but had Mr. Sands come all the way down from Brookfield Center, Connecticut to execute them?

A No.

Q There is no reason?

A Just required an officer and I felt that Mr.Gordon had executed one set. I felt there was no reason why I couldn't have Mr. Sands execute the second set.

Q I show you Exhibit A, and whose handwriting is that in the conformance? Is that your handwriting conforming that original, that copy to the original?

A Doesn't look like my handwriting.

Q Do you know whose it is?

A Sorry, I don't.

Q And it has a "/s" in front of it indicating it is the signature of someone other than Mr. Sands, is

that correct?

A No. You mean that "s"?

Q Yes.

A That would indicate signed, I would assume. I don't know who did that. In other words, that is not my handwriting, I can tell you that.

Q That is the total extent of the conformation of that copy to the original, isn't it?

A Well, there is also a date on the top of September 5, 1974.

Q That is typed in?

A That's correct.

Q But I am talking about the conformation of the copy with the original to the extent that there is no typing.

A Yes. As a matter of fact, I was the notary in this case.

Q But you put no notary stamp on the copy?

A Well, apparently I didn't. I should have and I didn't.

Q And you didn't indicate filling in any of the other blanks, did you?

A Apparently I didn't, but I can tell you that on September 5th I took Mr. Sands' signature, and I can also

tell you on September 5th that I executed a certificate of service.

Q But the copy that you had mailed out was unconformed except for writing in Mr. Sands name at the bottom of it?

A Apparently that's correct.

Q Do you recall whether on September 9th you called me or called my office once or more than once? Do you recall?

A I recall only once, Mr. Eno, but I wouldn't want to swear to that. I know I made a call early in the morning from the Ambassador Club at LaGuardia Airport.

Q You went to Washington on September 9th on the United Gas Pipeline matter?

A Yes, sir.

Q Whom do you represent in that matter?

A Philip S. Steinberg and his wife -- I forget his wife's name offhand -- as representative of a class of debentureholders of Pennzoil Company, and we have also intervened, as well as the Independent Investor Protective League, in Federal Power Commission proceedings involving Pennzoil.

Q Your appointment there, you said, was 1:30

in the afternoon?

A Somewhere in that neighborhood,yes, sir.

Q Do you remember with whom you had your appointment?

A Sir, there were about 20 attorneys there.

Q Do you know the names of any of them?

A Well, I think there was an assistant attorney general from the State of Louisiana.

Q Do you know his name?

A I don't know his name. If it really became material, I think it would be easy enough to verify the 20 attorneys who were there. As a matter of fact, I made a statement at that meeting. It was a big conference room that we had. There were lots and lots of people there.

Q Can you give me the names of any one of them?

A Well, Mr. Edward Oherrin was there, who was my co-counsel in the matter.

Q Anyone else that you can name?

A Let me see. I know there was a gentleman from Baker & Botts. I am trying to -- of Houston, Texas -- I am trying to think of his name; and a remember an assistant attorney general from the State of Louisaiana. As I say, there were almost 30 people there. I am sure

if it really was material I could get you the list.

Q Do you know where you had your appointment that day?

A I believe it was at the offices of United Gas Pipeline Company in Washington. I don't recall the address at the present time, but I know that it was somewhere in downtown Washington. I know we went from the upper floor, where there was a small conference room, to the lower floor, where there was a big conference room.

Q You said that the fact that you had to be in Washington on the United Gas Pipeline matter came as a surprise to you, as unexpected, is that right?

A Yes, sir, completely unexpected, sir.

Q When did you learn that you had to be in Washington on September 9th?

A At 1 o'clock on September 6th when I was in St. Louis.

Q From whom did you learn that?

A I was in Mr. Shostak's office, sir, at 818 Olive Street in St. Louis. I received a telephone call, or Mr. Shostak received a telephone call from somebody, I believe, from Baker & Botts in Houston, Texas, stating that there was going to be a settlement hearing

on Monday.

Now, the problem was that I had another engagement in New York on Monday at the offices of White & Case in connection with depositions, and I know that I made a number of calls from St. Louis at that time to get those depositions moved to Tuesday.

Now, here again I can't swear to the order, your Honor. I know that I telephoned -- I know that I telephoned Norman Nelson at Milbank, Tweed, and I asked him if he could arrange with everybody else whether or not we could adjourn those depositions on Monday because I had something to do in Washington, and Mr. Nelson said that he just wasn't going to do that as far as he was concerned, he'd agree to an adjournment but he wasn't going to speak for anybody else.

I may have put a call in to White & Case and tried to find Nora Banfield, who was the partner in charge at that time, and I believe she was out, and then I went ahead and I called a man by the name of Williamson. His name is -- let me see if I get his name. The firm is Williamson & Schoenman, your Honor, in -- at 60 East 42nd Street, and Williamson -- and Williamson was gracious enough to call the other attorneys

and to arrange the adjournment for me. I don't recall now whether there was a second call made or whether Williamson called me back or whether I asked him to call me collect, but in any way there were a lot of calls made from St. Louis to New York during that time and they were made from Mr. Shostak's office. I may have charged them to my credit card. I am not quite sure how they came about but I know the calls were made.

Q You came back from Washington on the 7:00 a.m. shuttle, you said?

A Yes, sir.

Q September 10th?

A Yes, sir.

Q And that was into La Guardia?

A Yes, sir.

Q What time did you arrive at La Guardia?

A Well, it would be somewhere around eightish, I I would assume.

Q What did you do then?

A Got on the bus to go to New York. I had my car parked at La Guardia but I didn't want to take that because in the morning there is a special bus lane that goes across the bridge, that buses can take but the cars can't use it. It's actually the tunnel. There is a

bridge that comes before the Midtown Tunnel, your Hn Honor, maybe you are familiar with that. There's a three-lane road and what they do in the morning, they take one lane of the outbound and they make that exclusive for buses, but if you take a car, you get hung up and you will be there for an hour, and I had to get in, I was very late., so I took the bus, the LaGuardia Airport bus, got off at Grand Central, ducked into the subway, and came down to the office of White & Case.

Q At what time did you arrive in the offices of White & Case?

A Somewhere I would assume around nineish or so, 9, 9:30, somewhere in that neighborhood.

Q Where are their offices?

A I believe it's 14 Wall Street, sir. Again, I don't want to swear to the address.

Q You called me on September 10th, is that correct?

A Yes, sir.

Q Where did you call me from?

A From their offices, sir. I didn't get you either. I put a call to your office.

Q And it took you from 8 -- from LaGuardia, at 8 in the morning, to about 9:30 to get down from

LaGuardia to the offices of White & Case?

A Well, I wouldn't --

Q Just answer. Would you answer that question yes or no.

A Mr. Eno, I don't want to be in a position of letting you nit-pick on time. I don't know. I know that I took the 7 o'clock air shuttle. I know that I got to the bus as soon as the plane landed in New York. I know there were a certain number of minutes of connection time before the bus pulled out. I know that I then got to the airline terminal right across from Grand Central. I know that then I got off the bus, went down into the subway and went down to the offices of White & Case, and it is possible -- now again you understand, your Honor, that it's a little bit hard to remember exactly what happened any particular day. I have a funny feeling that I went upstairs to where the airline ticket offices are, put a call in to Miss Banfield because we had a 9 o'clock date, that was the agreement, as a consideration for the adjournment from Monday to Tuesday. And I think I called her and said, "I'm awfully sorry, I got in late, but I will be down just as soon as I can."

Q What time was your appointment at White &

Case?

A Nine o'clock, I believe, sir. Now, again I would assume that if it really were material, that the people -- there were plenty of lawyers there who know the time that I got there.

THE COURT: Go ahead.

Q You heard Mrs. Blacker testify yesterday?

A I certainly did.

Q She testified that when she prepared the copies of the answers to interrogatories of Messrs. Randolph, Fagan and Michael that she put the copies in the file.

A That's correct.

Q She also put in the file envelopes addressed to the attorneys, and that the copies that she put in the file were not in the envelopes?

A That's correct.

Q Can you tell us how the copies got into the envelopes?

A I put the copies in an open envelope at the time that I met with Mr. Sands, and, as a matter of fact, I told Mr. Sands that unfortunately I couldn't send these out because I didn't have the interrogatory answers back from the people and that this thing had concerned me because of the fact that we had had -- that this was the last day for sending these out. I left that

envelope and I told him the only problem I would have would be with your firm. The other firms I got along with fine.

Q What induced you to put the copies in the envelopes?

A Just to show him what had to get out. That's all.

Q Just to show him what had to get out?

A That's correct.

Q But you didn't tell him, "Send them out"?

A Of course not.

Q Now, you wrote in your letter to the court that you had -- and I will quote the letter to the court of September 11th, which is Exhibit B -- "I don't think I prepared before I left copies of answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis, Missouri," is that correct?

A That's correct, sir.

Q So although you intended to conform these copies to the originals, nevertheless you put the copies in the envelopes, is that correct?

A Just in an open envelope sir. I would have removed those from the envelope to conform them.

Q You also testified there was a girl in the front office of your office who sits in the front office?

A There's a girl there, Scher's secretary, yes, sir.

Q What's her name, do you know?

A I don't know.

Q Do you know the name of Mr. Scher's secretary or bookkeeper?

A Her name is Barbara. I don't know her last name. Unfortunately, I have had a lot of trouble with Mr. Scher's staff and this is one of the reasons why he and I are parting company in approximately a month. I get no cooperation from his staff whatsoever.

THE COURT: Mr. Bader, just stick with the questions.

THE WITNESS: All right, sir. I am sorry.

THE COURT: Very good.

Q When you spoke to Mr. Sands on the morning of September 9 -- do you remember that?

A Yes, sir.

Q -- where were you when you spoke to Mr. Sands?

A At the Ambassador Club, LaGuardia Airport, sir, Trans World Airlines.

Q Did he tell you how many letters had arrived

from our firm?

A I don't recall.

Q Did he tell you there were other letters there for you?

A He read off the return addresses of a number of letters, yes, sir. I don't recall which ones now. I know he told me there were some papers from attorneys, there was something from a firm in Los Angeles I think, O'Mulvaney & Meyers, or something like that, but I could be wrong on that too.

Q On September 10, 1974 I had hand-delivered to your office a letter of which I will show you a copy and ask you whether you saw the original of that letter when you came to your office that evening?

A I certainly did.

MR. ENO: May I have that marked, please.

Q Mr. Bader, as I understand it, in the reception room of your office there were two desks, is that right, one behind the other?

A Yes, one is actually mine, the other one belongs to Scher's secretary.

Q The one in the front is yours?

A Yes, sir.

Q Nobody sits at that desk?

A No, sir.

Q You also testified that you expected to receive back from the individual plaintiffs two answers from Connecticut, is that correct?

A No, sir.

Q Isn't that what you said?

A Wait a minute, wait a minute. Not from -- no, not from Connecticut. I believe one from Vermont and one from Connecticut.

Q Your testimony was you expected two from Connecticut. Your testimony now is that one was from Vermont and one was from Connecticut.

A Let me tell you this. Gary Michael, who was one of the individuals involved, is a law student. He is a resident of Connecticut but I believe he goes to school in Vermont. So, as a matter of fact, I think in one of your letters you questioned the fact that there was some venue problems with the affidavit of Michael that had been subsequent sent in to the court. Do I know that I expected one from Mr. Fagan from Connecticut, and where Mr. Michael's was coming from at this point, I am not sure whether it was Vermont or Connecticut. In any event, Mr. Fagan's answer, as you know, never arrived. Still hasn't arrived to this day.

Q As I understand your testimony, Mr. Bader, after you talked with Mr. Sands about 4 p.m. on September 5th --

A It was later than that but go ahead.

Q How much later?

A Well, Mr. Sands says 4:15. I wouldn't want to swear to 4:15. I know it was after 4. I think it was probably some time about 5, but --

Q You don't know how much after 4 it was?

A Well, I think at one point I said 4:15 because I adopted Mr. Sands idea of that. I am not precisely sure of the time. I know it was somewhere between 4 and 5. I wouldn't want to put it closer than that.

Q After that conversation you were under the impression that the answers had come in from all of the individual plaintiffs, weren't you?

A Yes, sir.

Q You didn't find out the contrary of that until you got to your office in the evening of September 10th, is that correct?

A That's correct, sir.

Q In your letter of September 11th to the court, which is Exhibit B, you told the court in that letter that when you called my office on September 9th

the following ensued, and I will quote:

"I was told about the receipt of the letter" -- that 's my letter -- "of September 6th on September 9, 1974 but not the contents" --

A That's correct,sir.

Q Just let me finish please.

-- "and believing that Mr. Eno was referring to the answers of Randolph, Fagan and Michael, I told his office that I told his office that I hoped to received the signed copies of those interrogatories and would be mailing them in a few days. I again told his office on September 10, 1974 that I hoped to receive the signed copies of the original documents in a few days."

A But that was September 11th, Mr. Eno. By that time --

Q Just a moment, please.

In this letter of September 9th you were talking about the messages you had left in my office on September 9th and on the morning of September 10th.

A I don't think that that's quite correct.

Q I will let you look at the letter and see whether it is that that you were saying to the court.

THE COURT: This is the letter of the 11th?

MR. ENO: Yes, your Honor, on the second

page.

page.

A Yes. Well, that's correct. Now you refresh my recollection, Mr. Eno. I really didn't know what we were talking about before. Now I understand what you are talking about.

Q So that while you were still under the impression that the original answers had already come into your office from the individual plaintiffs, you told the court that you had left messages in my office that you expected to receive the original answers in a few days' time, is that correct?

A No. Let me put it this way. I had never -- at the time -- at the time of your telephone call, in other words, the telephone calls of September 9th and September 10th, at that time I had believed the situation was as follows: The original interrogatories had come to my office but had not been sent out to you. In other words, the only ones that I knew that had gone out were the ones of Independent Investor Protective League, and therefore I could not certify at that particular time that the answers had actually been received because of the fact that I just didn't know.

Q But you were certifying in the letter, you

were telling the court in the letter, that you were telling my office they hadn't yet been received, they were coming in in a few days.

A I don't think that that's what that means at all. It certainly was not my impression to say that.

MR. ENO: I see. I have no further questions of Mr. Bader.

THE COURT: Let me be sure I understand this.

Mr. Bader, this letter of September 11th, addressed to me, whatever exhibit number it happens to contain -- I have the original here --

THE WITNESS: Yes, sir.

THE COURT: -- this bears the initials "CF as the typist, which I believe you said are your initials that you put down when you type something else.

THE WITNESS: Yes,sir.

THE COURT: You typed this letter yourself?

THE WITNESS: Yes, sir.

THE COURT: Do you have that letter in front of you?

(Exhibit handed to witness.)

THE WITNESS: Yes,sir.

THE COURT: Do you acknowledge -- look at page 2, the third full paragraph, beginning "On September 6."

THE WITNESS: Yes, sir.

THE COURT: Is the fact that you told Mr. Enos office on the 9th that you hoped to receive the signed copies of the Randolph, Fagan and Michael interrogatories and would be mailing them in a few days?

A No, sir. Well, I told him that -- the reason being -- I think the language is possibly unfortunate. I had written that in a hurry on the evening of September 11th, and you can understand that I was terribly upset at this particular point, that something like this had happened. I didn't know how it happened. What I had told Mr. Eno at the time was that since I hadn't been in my office I could not vouch for those answers actually being there until I actually got back to my office, and when I got back to my office I would pick those up, physically see them, and I would be glad to send him copies. That is what I meant when I said that, your Honor.

THE COURT: You said you hoped to receive the

signed copies of those interrogatories. Your awareness, as you say, was that you did not know whether you had received them or not.

THE WITNESS: I could not certify at this particular point because I wasn't in my office. All I had is a telephone call from Mr. Sands. Now, at that particular point how could I certify to Mr. Eno that those things were there when at that point I hadn't seen them?

THE COURT: The next line is the fact that you again told his office on September that you hoped to receive the signed copies of the original documents in a few days.

THE WITNESS: Well, what I meant to say, your Honor, I don't think --

THE COURT: Did you tell his office that?

THE WITNESS: In those precise words, no, sir.

THE COURT: In substance?

THE WITNESS: In substance, yes, because I hadn't been in my office. I hadn't seen them yet and how could I certify --

THE COURT: Where did you type this letter of September 11th.

THE WITNESS: Well, but this refers to the conversation -- I was in my office. My September 11th I knew what was happening. In other words, by the time the letter of the 11th was done, your Honor, at this point I knew what the facts were.

THE COURT: You hadn't been to your office?

THE WITNESS: I hadn't been to my office until the 11th, sir, until the evening of the 11th -- evening of the 10th, I'm sorry.

THE COURT: I seem to remember --

MR. ENO: May I ask a few other questions, your Honor, and I think it might become a bit clearer.

BY MR. ENO:

Q You didn't speak to me on the 9th, did you?

A No, sir.

Q And you didn't speak to me in your first call to my office on the 10th, did you?

A No, sir.

Q You also spoke to me on the 10th, and you have already testified to this. When you did speak to me later in the morning on the 10th before you had gotten back to your office, didn't you say to me, and you testified with respect to this, "I have the originals and you can take my word for it"?

A I don't believe I said that, sir.

Q You don't?

A No, sir. I believe I said that I was informed that I had the originals and that I'd be glad to exhibit them toyou as soon as I got to my office.

MR. ENO: I see. We will let the record speak and I am going to make my statement for the record as well, but in any event, your Honor:

Q After Mr. Nevling had been to your office --

A Are you talking to me, sir?

Q Yes, after Mr. Nevling had been to your office on September 11th did you receive a copy of a letter that I addressed to the court that day?

A I certainly did.

Q Is this a copy of the letter that I sent to the court?

A I couldn't swear to it but I would assume it's probably right.

MR. ENO: May I have that marked, your Honor.

(Defendant's Exhibit C was received in evidence.)

THE COURT: Mr. Bader, if I can go back again to that letter of September 11th, to focus your attention,

Mr. Sands gave testimony here that on the afternoon of the 5th you called him on your 61 line.

THE WITNESS: Yes, sir.

THE COURT: And he said to you, "You don't have to worry, the Teleprompter answers are here"?

THE WITNESS: Yes, sir.

THE COURT: Did he say that to you?

THE WITNESS: Yes, sir.

THE COURT: What did you understand that to mean?

THE WITNESS: That all of the interrogatory answers, Michael, Randolph and Fagan, had gotten into the office on September 5th and that under the circumstances I could send them on Monday when I returned -- or, actually, I thought I'd return to the office on Saturday -- that I would send those things out, and if I were a day late and there were some problems with respect to that I could make a motion with the court and as long as the interrogatory answers actually came in on the 5th, I would assume that I could get my extension of time without any trouble.

THE COURT: On the letter that you wrote on the 11th you relate a conversation which you stand behind with Mr. Eno, in which you say that you told him

on both the 9th and the 10th that you hoped to receive the signed copies, being the originals, in a few days.

THE WITNESS: Well, because --

THE COURT: You had been informed by Mr. Sands on the 5th, however, that they were there?

THE WITNESS: That's correct, sir, but I am not going to take Mr. Sands' word for anything until -- if I am going to certify to Mr. Eno that certain things are in the office, I have got to be physically there to make sure that they are received, so that --

THE COURT: Did it occur to you to say to Mr. Eno that "Mr. Sands tells me that the originals are there, and I will go check and you can come look at them"?

THE WITNESS: That's what I should have done, sir. In retrospect, there is no question about that, that that is what I should have done.

THE COURT: You did not do that?

THE WITNESS: I did not do that, sir.

THE COURT: You did not say in any way that "I understand they are on my desk"?

THE WITNESS: I think I said something to that effect to Mr. Eno, I don't know -- I am a little

bit confused about the precise conversation. Mr. Eno seems to indicate that I said to him, "The interrogatories are in, you can take my word for it," and that the conversation I relate in your letter is not the correct transcript of the conversation that we had.

THE COURT: I see, all right.

MR. ENO: Your Honor, if I may just say that we have the testimony of Mrs. Rosen and Mrs. Kresh who took the messages of September 9th and September 10th, and there is in evidence the messages as they received them.

THE COURT: All right.

MR. ENO: And I ask Mr. Bader if after we received his of September 11th, which arrived in our office on September 13th, he then received a copy of another letter that I addressed to Judge Owen.

THE WITNESS: I presume I did get -- I presume I did get this letter. I believe I did get that letter, yes, sir.

THE COURT: Which letter is this?

THE WITNESS: That is the letter of September 13th.

MR. ENO: The 13th.

THE WITNESS: I don't know if I answered it

because at that point we had motions pending.

MR. ENO: May that be marked.

(Defendant's Exhibit P was received in evidence.)

THE COURT: Let me just ask you with regard to that letter, do you have the September 13th letter?

THE WITNESS: The September 13th letter, yes, sir.

THE COURT: In there Mr. Eno is writing that in a conversation with you on the 10th you assured him that you had the original signed answers of all the plaintiffs and said: "You can take my word for it."

Is that your recollection of that conversation?

THE WITNESS: No, sir, but there was -- now, the recollection --

THE COURT: What is your recollection of that conversation.

THE WITNESS: Well, the recollection of the conversation, I believe, was that I said to Mr. Eno that I hadn't been in my office, but that I had been given information to the effect that the interrogatories were there, and that I hoped to physically receive those things as soon as I got down to my office in a couple of days, or

1 something of that sort.

2 I mean I don't precisely remember what the

3 substance of the conversation was but I can tell you

4 this, that at the time of this conversation I had not been

5 in my office from the time of the 5th -- from the

6 time that those interrogatories of Randolph were received

7 on the 5th and seen by Mr. Sands until I received and came

8 to my office on the evening of the 10th.

9 So I had no -- other than hearsay knowledge,

10 I had no actual knowledge as to whether or not these

11 answers had been or had not been received.

12 THE COURT: In substance then it is your

13 recollection that you did in effect say to Mr. Eno

14 that you understood you had the original signed answers?

15 THE WITNESS: Yes, sir, I believe that's

16 right.

17 THE COURT: Very good.

18 MR. ENO: I have no further questions.

19 THE WITNESS: Your Honor, I'd like to

20 basically redirect myself. Will your Honor let me do

21 that in narrative form or questions and answers.

22 THE COURT: I certainly will. You go right

23 ahead in any form you feel is comfortable to you.

24 THE WITNESS: All right. I want to make a

25

statement to the court with respect to the testimony yesterday of Mrs. Blacker.

There is a September 5th date on the answers to interrogatories signed by Mr. Sands of the Independent Investor Protective League. With respect to that, my best recollection is that I had requested Mrs. Blacker to draw those interrogatory answers on the 4th, and that I had asked her to put the 5th date in the answers because of the fact that Mr. Sands was expected at my office the next day to sign them.

I further -- well, the other problem, the other problem I think I can probably bring out, Mr. Eno is going to be making a statement and I think on my cross I can bring out what I want to bring out.

THE COURT: All right. That is all you'd like to put on the record at this time?

THE WITNESS: Yes, sir.

THE COURT: Very good. You may step down.

(Witness excused.)

MR. ENO: I'd like to resume with Mr. Nevling and finish with Mr. Nevling.

JAMES KELLEY NEVLING, JR., resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ENO:

Q Mr. Nevling before yesterday did you ever see Mrs. Blacker who identified herself as Mr. Bader's secretary?

A No, I never have.

Q Did you know the name of Mr. Bader's secretary when you visited his office to serve the order to show cause prior to the time you spoke to the lady who identified herself as Mrs. Blacker?

A No, I did not.

MR.BADER: Objected to as irrelevant and incompetent and immaterial.

THE COURT: Overruled.

Q On September 11th did you go to the office of Mr. Bader?

A Yes, I did.

Q Did you go there for the purpose of inspecting the interrogatories, the answers to interrogatories, which had presumably been received?

A That's correct,yes, at your request.

Q Will you tell me what happened, what occurred

at the time of your visit?

A I arrived at about a little bit after 9 o'clock in the morning, and Mr. Bader was there and opened the door for me -- well, at any rate, I came into the office. I don't recall if -- whether he opened the door or not. I was shown by him what appeared to be signed copies of two interrogatory answers, those being the answers of the Independent Investor Protective League and the answers of Mr. Randolph, and I asked about the other two interrogatory answers of Mr. Michael and Mr. Fagan, and Mr. Bader said that he could explain that, and gave me certain papers, including an affirmation of his which stated that he had not yet received the signed interrogatory answers of Mr. Michael or Mr. Fagan. So upon reading that affirmation that he gave me I became aware of this and I didn't ask him about it any further.

Q Did he volunteer anything further.

A There was some additional conversation concerning extensions of time, but I don't believe there was --

Q Did he say at any time that the answers of Fagan and Michael or any other answers had been inadvertently sent to us?

A No, he did not.

MR. ENO: I just want to have identified for the record the affirmation to which Mr. Nevling referred.

MR. BADER: Are you talking about my affirmation?

MR. ENO: Correct.

MR. BADER: I will concede it if you've got it on the record.

Q I show you an affirmation dated September 11th, and I ask you, Mr. Nevling, if this is the affirmation to which you referred.

MR. BADER: I concede that that affirmation was signed by me, your Honor, and it may be introduced if -- it is part of the record of the case in any event. I don't know whether it has to even be reintroduced in evidence. I concede the signature.

THE COURT: This is the one that you gave Mr. Nevling that morning, is that so?

MR. BADER: Yes, as part of the motion for an extension of time, your Honor, the one that you denied.

THE COURT: Very good.

MR. ENO: It is entitled "Affirmation in Support of Motion dated September 11th," and it is

1 part of thecourt papers.

2 I have no further questions of Mr. Nevling.

3 CROSS EXAMINATION

4 BY MR. BADER:

5 Q Mr. Nevling, when you met me at my office

6 on September 11th, was I courteous or discourteous?

7 A I would say you were courteous to me.

8 Q And when I handed you those papers didn't I

9 hand you carbon copies or photocopies.

10 Let's break that up, Mr. Nevling. First

11 of all,did I give you photocopies of the original signatures

12 of the Independent Investor Protective League and plaintiff

13 Randolph's answers to interrogatories?

14 A My recollection is that first you showed me

15 original answers which I think were on -- were ribbon

16 copies.

17 Q Yes, sir.

18 A And that then at my request I asked for the Xerox

19 copies or some sort of copies of the signature pages of

20 these exhibits -- these documents, and at that point

21 I think you gave me -- I don't know how to characterize

22 them except that they are not -- they were not plain paper

23 copies. I think they were treated paper carbons.

24 Q In other words, what I did, isn't it true, Mr.

25

Nevling, that I took these things to a photostat machine that I have, a treated copy for the photostat machine, not a Xerox, in the office, and simply ran these things through the machine and gave them to you?

A I assume that's how you did it. You left the room and you came back with the copies.

Q In other words, you didn't actually see me physically do it, did you?

A No, I did not.

Q But you have no doubt that you physically did it?

A I assume you did.

Q Incidentally, when you were in my office did you see the condition of my desk?

A I am not sure if -- which of the offices is your office. You took me into one office and let me sit in it for a while, and that offide, the desk in that office was covered with papers.

Q That was my office, Mr. Nevling. That was the one straight down through the hall, wasn't it,as you walked into the office?

A Well, as you come into the office there is an L-shaped hall going off to the left.

Q Right.

A And it was around the bend of the L, about half way down.

Q And an office.

A But off to the side of the L. It was not at the very top of the L, if you understand what I mean.

Q Do you know the color of the furniture in my office?

A No, I don't.

Q You don't remember whether there were soft chairs or hard chairs?

A I don't recall.

Q You don't remember whether they were upholstered chairs or not?

A I don't recall.

Q In any event, was there a big desk in that office, do you remember?

A Yes, there was.

Q Covered with papers of all kinds?

A That's correct.

Q You were in my office all right, Mr. Nevling but I can appreciate the fact that you did not know this.

Well, now, I gave you photocopies -- I gave you a motion for an extension of time, do you remember that?

A That's right.

Q I handed that to you at that time, didn't I?

I handed you motion papers?

A Yes, I believe so.

Q Were those motion papers that I handed you the, copies of those motion papers, ribbon copies or photocopies, do you remember?

A I believe they were -- they were not ribbon copies. They were --

Q They were photocopies, weren't they?

A I believe so.

Q Do you recall any other papers that I served on you in this case prior to this time or were you not that much in charge of the case?

A On that date I believe you gave me some other papers in addition to the motion for the extension of time, the copies of the signature page of the interrogatory answers of Independent Investor Protective League, and the signature page of the answers of Mr. Randolph, but I am not certain.

Q But I was just talking about -- I am not talking about it.

A You are not talking about September 11th?

Q No, I am talking about prior. We have had prior proceedings of various kinds in this case.

A That's true.

Q And I was just wondering if you are familiar with those or was Mr. Eno the person in charge and perhaps I am asking the wrong witness?

A Mr. Eno is in charge of the case but I did work on it for some time.

Q Do you recall,on any prior papers of the case, whether I also gave you photocopies rather than the ribbon copies of various documents?

If you don't know, Mr. Nevling, I won't press you.

A I am not certain of that because our normal office practice is to have duplicate copies made on our own machines and I have seen --

Q So you just wouldn't know that?

A I don't recall.

MR. BADER: All right, Mr. Nevling, you can step down.

THE COURT: Thank you, Mr. Nevling.

MR. ENO: May I have just one or two questions of Mr. Nevling?

MR. BADER: Of course.

THE COURT: Very good.

REDIREC EXAMINATION

BY MR. ENO:

Q When you were in the office, since Mr. Bader brought this up, when you were in the office with Mr. Bader did he hand you a set of interrogatories addressed to Touche Ross?

A Yes, I believe he did. And I think he also gave me a notice of deposition, if I am not --

Q Did he make any statements to you in connection with that at the time he gave them to you?

A He said that he was not going to give us any extension of time on anything henceforth and said that the other defendants could have additional time but that we could not have additional time. But I believe then he qualified that and said if we would give him an extension of time to serve answers to interrogatories he would be willing to give us an extension of time on all discovery until after some decision had been reached on our motion to dismiss his complaint.

MR. ENO: I have no further questions.

MR. BADER: Thank you, Mr. Nevling.

(Witness excused.)

L A W R E N C E R. E N O, called as a witness by defendant Touche Ross & Co., being first duly sworn, testified as follows:

THE WITNESS: Your Honor, I would like to speak in a narrative fashion, if I may.

THE COURT: Go ahead.

THE WITNESS: In order to make the record complete to the extent that I can, and I would like to start with September 9, 1974.

My secretary was apparently away that day and I had a substitute secretary. In the morning I received the message that has been marked here from Mrs. Rosen, who is a receptionist in our office, which is this message that's been marked as Exhibit H. When I received that message, your Honor -- well, before that -- there was apparently another phone call to me from Mr. Bader, and it is my practice to keep a record of my incoming and outgoing calls, and at 10:30 on that morning, according to this record that was kept by the substitute for my secretary, Mr. Bader called.

I was not available, I was in a conference elsewhere in the office, and when I returned and I got the message I tried to reach Mr. Bader, and this girl, who I forget what her name is, reported that she could

not get in touch with him.

I would first like to have marked this message sheet. The handwriting at the top, "Monday, September 9, 1974," the handwriting "Incoming" and "Outgoung," is my handwriting because this was a substitute for my secretary. I prepared it so she would know how to do it. The other handwriting is the handwriting of the secretary, except for the comment "LRE not available," which is something that I wrote in some time later when this series of events began to proliferate, and I'd like to offer that so that the record is complete.

THE COURT: Mr. Bader, any objection?

MR. BADER: May I see it, sir?

THE COURT: Surely.

MR. BADER: Could I ask a couple of questions on voir dire on this?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. BADER:

Q Mr. Eno, is this your handwriting?

A I have identified on the record which part of it is my handwriting.

Q I mean there is "Incoming, Mr. Golub," or

something like that,"Mr. Spanier," and "Outgoing, Mr. Bader."

A I said everything that I have not identified as mine was the handwriting of the substitute secretary.

MR. BADER: I have no objection, your Honor.

THE COURT: All right. It will be received.

(Defendant's Exhibit Q was received in evidence.)

THE WITNESS: I then wrote and had hand-delivered to Mr. Bader my letter of September, which has been marked -- may I see that?

(Paper handed to witness.)

THE WITNESS: -- which has been marked as Exhibit I, your Honor.

Has your Honor seen this letter?

THE COURT: I have it before me.

THE WITNESS: I now turn to the day of September 10th, your Honor.

I would like to first mark the incoming and outgoing calls that were received by me or my secretary and made by me on my secretary on that day, your Honor.

BEST COPY AVAILABLE

(Defendant's Exhibit R was marked for identification.)

xx THE WITNESS: The handwriting on this Exhibit R is the handwriting of my secretary.

The first incoming call is a call from Mr. Bader. That is reflected in the message that my secretary received, which is marked as Exhibit J.

I received that message some time after I came into the office. I can't recall what time I came into the office, but I think after I came in I attended to my mail and other things, and some time I would say around 10:30 or that area I put in a call for Mr. Bader, and I was advised by my secretary that he was unavailable and I asked to speak to Mr. Bader's secretary.

~~I said to~~ Mr. Bader's secretary that I was very anxious to get in touch with him, that it was a matter of great urgency, that did she know where he was. She wouldn't tell me where he was but she indicated that she knew how to reach him, and I told her that she had better get hold of Mr. Bader and have him get in touch with me very quickly, because if I didn't hear from him I intended to communicate with thecourt, and she indicated that she would try to get hold of Mr. Bader.

That was the sum and substance of that conver-

sation.

I may say that I heard Mrs. Blacker's testimony yesterday and it was inaccurate insofar as she stated that she had referred any message to me from Mr. Bader.

My call to Mr. Bader's secretary is the second outgoing call on this sheet.

Some time after that Mr. Bader's secretary called me. She said that she had been unsuccessful in reaching Mr. Bader, would I defer getting in touch with the court until 1 o'clock and she would try to get Mr. Bader to be in touch with me before 1 o'clock, and I said yes, I would, but that she had better exert herself to have Mr. Bader call me.

Very shortly after that Mr. Bader did call me, and I placed that call, your Honor, at about 12:30.

I told Mr. Bader in that call that I was very unhappy about these messages that I had received from him, I was unsatisfied with his statements that we would get photocopies in a few days, that I insisted upon seeing the originals immediately, and I wanted to see all of the original answers of all of the plaintiffs.

He said that I had the right to see them but that he was busy on a deposition and he couldn't show them to me immediately.

I said -- and I think he also added -- I am sure he also added, "But I will be free in a few days and I will show them to you."

I said that was unsatisfactory; I wanted to see them that day, and I said to him, "I don't believe you have them,"and he said, "I have them, you can take my word for it." And I said, "Well, I want to see them. I want to see them this afternoon, and I want to -- I will meet you in your office or have Mr. Nevling in your office when you return."

He said no, he said "That's not possible." He said, "I don't know where they are in my office, and I may have left them at home."

I said, "Very well, we'll be in your office tomorrow morning," and he said, "All right," and he indicated a time that was unsatisfactory to me, and I said, "We'll be there at 9 o'clock," and he made the comment, "Will you please give me time to get there from my home," and I said, "That's plenty of time to be there from your home. We'll be there at 9 o'clock."

Promptly after that conversation terminated I sent my letter to him of September 10th which confirmed that appointment to see the originals of the further answers of all of these plaintiffs. This has been

marked as Exhibit N. I don't know if your Honor has a copy of it.

THE COURT: I do.

THE WITNESS: Has this been marked for identification? I would like it in evidence.

MR. BADER: No objection, your Honor.

THE COURT: Received.

MR. BADER: I don't think there is any objection to any of the evidentiary matter that has been brought into this hearing. It seems to me it is all pertinent.

THE COURT: Very good. They may all be marked.

THE WITNESS: Now, your Honor, I would like to get into the record what occurred before the court on September 20, 1974, at the time that we argued our motion to dismiss in this case. I argued for the motion and Mr. Bader argued against it, and it involved the circumstances that are presently before the court.

I listened quite intently to what Mr. Bader said to your Honor, and promptly, after returning to my office that day, I dictated a memorandum of what he said. The memorandum contains not only statements of what he said but comments of mine. I would ask that this memoran-

dum be marked for identification, your Honor.

THE COURT: You can certainly do that.

(Defendant's Exhibit S was marked for identification.)

xx THE WITNESS: On the argument before your Honor Mr. Bader said that he left his office on September 5th at about 3 o'clock. He said that Mr. Sands was with him at the time that he left, and that he told Mr. Sands that if the answers of the other plaintiffs came in he should mail out the copies.

He said that after that, after he had left, Randolph's answers came in and that Mr. Sands inadvertently mailed out the copies of all of the answers instead of just Mr. Randolph's. There were comments by your Honor at that particular point which I will skip. They are in this memorandum if Mr. Bader wishes to comment upon them.

Your Honor asked Mr. Bader when Mr. Randolph's answers had come in and he said that his answers had come in in the 3 o'clock mail on September 5th.

Your Honor then asked Mr. Bader when he had first learned that the copies had been sent, of which he did not have originals, and Mr. Bader said that this was a question that he had been thinking about for quite a

while, that he had been contemplating, that he did not know exactly when he had learned it, but that he did know it when he had his conversation with me, he said.

Now, his conversation with me was, as I have testified at about 12:30 on September 10th.

Those are the statements of Mr. Bader which I would like to get into the record, your Honor, at this particular point.

THE COURT: What is the date of that?

THE WITNESS: That was September 20th, your Honor.

Now, your Honor, I would like to correct an inaccuracy that appears in one of my affidavits. In one of my affidavits I stated that the answers of these individual plaintiffs had come in the same envelope as the answers of Independent Investors Protective League. I had been given that information and I believed it to be true. I subsequently investigated it, and have come to the conclusion that there were two mailings, and I have located the envelope in which I think one or another of the individual answers came in. I can't testify as to whether all of them came in this envelope because this is the envelope in which one or the other of them arrived. And I would like -- would you please --

MR. BADER: I am sorry, sir.

THE WITNESS: I would like to have this envelope marked in evidence, please.

THE COURT: You may.

MR. BADER: I have no objection, sir.

(Defendant's Exhibit T was received in evidence.)

xx THE WITNESS: I would also like to have marked in evidence simply for the record with respect to my letter of September 9th -- I would like our office copy introduced because it shows the delivery of that letter by hand on that date, your Honor.

MR. BADER: I have no objection.

THE WITNESS: It can be introduced with the number and a letter -- or a letter with the number following it.

MR.BADER: By all means, your Honor. I certainly have no objection.

THE COURT: Let me see the envelope.

THE WITNESS: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. BADER:

Q Mr. Eno, are you the person in charge of this

case?

A I am.

Q Who do you represent?

A Touche Ross & Company.

Q Do you represent any other defendants?

A No.

Q Do you know who does?

A I know some of them.

Q Do you know a firm known as Shea, Gould?

A Yes.

Q Do you know a firm by the name of Rosenhaus, Markowich?

A I know of the firm, yes.

Q Prior to the time that these matters happened were you in touch with these other firms with respect to what was going on in the case?

A From time to time.

Q Did you ever check with those firms to see whether or not they got copies of those Randolph, Fagan and Michael interrogatory answers?

A I do not.

Q You don't know to this day whether they did or did not, do you?

A I do not, no.

Q I don't think you gave me your address, Mr. Eno.

A 175 Riverside Drive.

Q Mr. Eno, assuming that I had called you on September the 5th and had said to you, Mr. Eno, the interrogatory answers are going to be a few days later, but I will extend your time accordingly," would you have agreed to an extension of time?

A I can't tell you now what I would have done then.

Q Did you tell me somewhere along the line that you weren't going to give me any extensions of time?

A I did not.

Q You never told me that?

A I did not.

Q In other words, you might have given me an extension of time?

A I can't tell you now what I would have done then.

Q Jut you might have?

A It is conceivable that I might have, yes.

Q Is there any way that your client has been prejudiced by the fact that these interrogatory answers of Randolph came in --

THE COURT: I don't think that is an appropriate question for this.

MR. BADER: All right, I withdraw it, your Honor. I withdraw it.

Q Mr. Eno, are you reporting to Touche Ross & Company with respect to the matters involved in this hearing?

A First of all, I think that is a privileged communication, if I were reporting them to them.

THE COURT: I don't know that it is relevant, in any event.

MR. BADER: Withdrawn, your Honor.

THE WITNESS: Your Honor, can I make an objection in my capacity as attorney?

THE COURT: You may.

MR. BADER: You certainly can.

THE WITNESS: I object to the question.

MR.BADER: I withdraw it. In view of your Honor's suggestion I withdraw that. I withdraw that question.

Q Mr. Eno, you have received various papers from me in this case prior to this problem that we have had on these interrogatory answers, haven't you?

A Yes.

Q Various things, answers, amended answers, motions?

A Right.

Q Problems of that kind?

A That's correct.

Q Have you received ribbon copies or photocopies?

A Well, it's very easy to tell. We have our file here. I can riffle through it.

Q Can you do that for me, please?

A Surely.

THE COURT: You mean carbons or photos.

Q That's right, carbons or photos.

A I know I have received carbons from you.

Q I just want to know if you have ever received any photos.

A I am sure that I have. Here is one of them and here is another one. Here is another one.

MR. BADER: I have no further questions, your Honor.

THE COURT: All right.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Mr. Eno does that --

MR. ENO: Mr. Pickholz stated that I didn't

introduce them in evidence, but I think marking it for identification is sufficient, your Honor, because I testified to the facts that are in the memo that I consider relevant.

THE COURT: All right. Mr. Bader, do you want to address yourself to Mr. Eno's statements as to the representations made in court on the 20th of September?

MR. BADER: Well, the problem is, your Honor, I don't remember them, and if they were --

THE COURT: Why don't you examine Mr. Eno's memorandum?

MR. BADER: I have examined the memorandum and all I can tell you is this:

I don't remember the representations having been made. If they were made, they just aren't true, because the facts in this particular case are basically the facts that have been brought in the testimony, and, of course, it is possible that when this memorandum was -- when these representations were made, if in fact they were made, they may have been made based upon inaccurate information.

THE COURT: Let me see that memorandum.

(Document handed to court.)

THE COURT: I have some handwritten notes

here which I must say are cryptic in the extreme, and I have no objection to marking these as an exhibit for identification.

I have notes here, "Bader said to Sands on September 5, 'If answers come in want you to send answers out.'"

This is my notation from what I recall your saying to me. You say if that is what you said at the time, that is in error?

MR. BADER: That is in error, your Honor. Mr. Sands testified with respect to the matter. I frankly had not made an exhaustive investigation at that time.

THE COURT: But this was your --

MR. BADER: I understand that.

THE COURT: -- your statement of what you recalled saying to Mr. Sands.

MR. BANDER: Yes, your Honor.

THE COURT: "Bader said to Sands, 'If answers come in want you to send answers out.'"

MR. BADER: Apparently that is wrong, your Honor, because Mr. Sands testified that I did not give him such instruction.

THE COURT: What is your memory of that?

MR. BADER: Well, now that I have done over this matter, I believe Mr. Sands is probably right.

THE COURT: I see. All right. So you are not withdrawing from what you said but you think you were in error when you said that.

MR. BADER: I think I was in error when I said that.

THE COURT: On September 20th

MR. BADER: Yes, sir.

THE COURT: I see. All right. You want to mark my notes as Exhibit S1 in evidence here. Mark it Court's Exhibit S1 for identification, I think is sufficient.

(Court's Exhibit S1 was marked for identification.

THE COURT: Mr. Bader, do you want to address yourself to any of the other statements in that memorandum?

MR. BADER: Yes, sir. All I can is that --

THE COURT: Why don't you have it before you so you can look at it and see w-hat your position is with regard to any of them.

(Paper handed to Mr. Bader.)

MR. BADER: Yes. I don't believe that I

said that I -- I don't believe that I said that I did not know if -- I said to the court, as set forth in this memorandum, that I did know at the time of September 10th, at about 12:30 p.m., that I had -- that I either had or had not received -- let me see -- that the statement is made here that I did know at the time that I had the conversation with Mr. Eno on September 10th at 12:30 p.m., that I had known what happened at that point is incorrect. It would have to be incorrect. I could not have known that until the evening of September 10th, sir, and if I made such a statement before the court, all I can say is that I must have been confused.

In my letter to the court of September 11th I made no reference to any conversation with Sands. I do not mention Sands' name as the person who mailed the copies that some unknown person in the office mailed the copies. That is the letter of September 11th and that is correct. The letter of September 11th, your Honor, I did not know at that time that Sands had mailed the copies. I found that out only subsequently.

THE COURT: I see.

MR. BADER: Is there a third page to this memorandum, Mr. Eno?

MR. ENO: No.

MR. BADER: And that basically is the situation with respect to that memo, your Honor.

THE COURT: Those are the respects as to which you take issue with its contents?

MR. BADER: Yes. Well, the basic problem is, your Honor, at this point I have no recollection as to what I said to the court on the argument of the motion. If there are any inconsistencies between what I said to the court on the motion and what has come out in the testimony, all that I can say is that I must have been inaccurate at the time. At that point I wasn't under oath and it only was subsequent, when I did get under oath and I really made an exhaustive investigation of this to both check my time as to where I was and to check what Mr. Sands was doing and to make a complete and thorough check of the matter that I basically was able to determine the facts in this case, your Honor.

THE COURT: Very good. All right. That completes everybody's factual presentation?

MR. ENO: Yes.

MR. BADER: Yes, your Honor.

Would your want findings and conclusions?

THE COURT: Well, Mr. Eno, how do you propose to proceed? What relief are you going to be

asking for?

MR. ENO: Your Honor, what I thought I would do is present a memorandum to the court in which I would try to pull all of this detail together, and try to present a coherent picture of what we believe happened, and submit it to the court for the court's ruling, whatever disposition your Honor wishes to make. Certainly we will at that time in the memorandum suggest, your Honor, various courses that the court might take in this connection. I would appreciate it if I could reserve on that until we submit this memorandum.

MR. BADER: Could I have time to reply?

THE COURT: I think the best way to proceed would be for you to submit that and Mr. Bader will then have an opportunity to give consideration to it and take whatever stand he proposes.

MR. BADER: Fine.

THE COURT: How long would you like?

MR. ENO: Can I have two weeks for that?

MR. BADER: I would like a little longer than that to reply. If your Honor could give me three weeks behond that, I'd appreciate it. If your Honor can't, well, I will have to make myself available.

THE COURT: I will do that. I will give Mr.

Eno two weeks, and I will give you three weeks beyond that.

MR. BADER: Thank you very much, your Honor.

MR. ENO: Thank you, your Honor.

MR. BADER: In other words, we will not have formal findings and conclusions, we will just have memoranda and what Mr. Eno feels should be done and what-comments I propose to make?

THE COURT: Very good.

MR. BADER: Thank you, your Honor, and it's been a pleasure to appear before you. But I must say that my being a personal witness in a case is something I don't relish, and I hope I don't have to go through it again.

THE COURT: Good.

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